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## ARTICLES

### HOW WILL TECHNOLOGY CHANGE THE FACE OF CHINESE JUSTICE?

*Benjamin Minhao Chen\** & *Zhiyu Li\*\**

*The People's Republic of China is embarking on an ambitious program to revolutionize its judicial institutions through information technology. Millions of cases have been published online as part of a move towards greater transparency. Courts are piloting artificial intelligence systems that promise to streamline adjudicatory processes and expand access to justice. Although other jurisdictions have employed statistical and computational methods to improve judicial decision-making, few have sought to exploit technology to the same degree. A way of understanding this exceptionalism is to view the integration of technology into law as a microcosm of China's ambitions to emerge as a global artificial intelligence powerhouse and thereby establish itself in the first rank of nations.*

*Seen from a different perspective, however, the technologization of the legal system responds to certain oppositions in Chinese justice. First, courts today are straining under the burden of their caseloads. The contemporary turn towards legality has swelled the number of lawsuits while the professionalization of the judicial corps also culled its ranks.*

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\* Assistant Professor of Law, University of Hong Kong; Ph.D. (U.C. Berkeley).

\*\* Assistant Professor in Chinese Law and Fellow in the Durham Research Methods Centre, Durham University; J.S.D. (U.C. Berkeley). The authors thank the Lee Kuan Yew School of Public Policy, National University of Singapore, for generously funding this research and the Centre for Asian Legal Studies at the National University of Singapore for their gracious hospitality. This Article has benefited from helpful comments by Calvin Ho, Fu Hualing, He Xin, Jed Kroncke, Mark McLaughlin, Mathias Siems, Angela Zhang as well as participants at the Pacific China Legal Research Forum. All errors remain ours.

*Artificial intelligence enhances the speed and consistency of adjudication while online disclosure cultivates public trust in the courts. Second, adherence to legal rules and forms restored normality to a society upended by revolutionary struggle but its inflexibility also foments dissatisfaction and disrupts relationships. The ensuing governmental imperative for judges to mediate disputes has resulted in coerced settlements and delayed verdicts. Machine predictions of case outcomes, supplied by courts, guide parties to bargain in the shadow of the law, thereby preserving the voluntariness of peace and the sanctity of justice. Third, while the party-state encourages citizens to know the law and use it as their weapon, civil society and activist lawyers may rally behind a legal cause to challenge the ideological hegemony of the party-state. By helping citizens learn the law and claim their rights, databases and applications foster legal consciousness while disintermediating lawyers.*

*Technological initiatives for administering justice simply, swiftly, and singly have thus blossomed in China because they relieve some of the tensions in its legal system. An original survey of roughly a thousand netizens and interviews of over a hundred legal aid seekers suggest that internet and artificial intelligence technologies have the potential to realize and refine a Chinese brand of authoritarian legality. But there is also a larger insight here that transcends jurisdictional boundaries and legal cultures. Obverse to the democratization of law is the marginalization of the legal profession. The advent of technology thus surfaces a tension between two dimensions of legality. The first dimension sees law as the disciplining of human conduct through rules. The second dimension, on the other hand, conceives of law as a dynamic force that, by responding to reason, has the potential to reshape the normative status quo. To the extent that lawyers are integral to the vitality of the legal order, innovations that displace them may also undermine one conception of the rule of law.*

## INTRODUCTION

“When I first started my work back in 1988,” a Chinese judge recalled, “the court was located in a shared office building.”<sup>1</sup>

*Many cases were heard in judges’ offices. It was common to see judges trying cases while their colleagues were working [in the same space]. There were no heaters, air-conditioners or computers. Law clerks took notes of the trial minutes by hands, with a sweating back in the summer and freezing hands and feet in the winter . . . . Judges rode bikes to handle cases outside the office, and to deliver and serve court documents. There were no printers. Issuance of legal documents relied on the only old typewriter which the court had.*<sup>2</sup>

Case judgments were not easily accessible to the masses. Indeed they “were of the ‘for-your-eyes-only’ sort, never intended for readers even outside of the authoring institution.”<sup>3</sup> As such, they were not widely disseminated and were usually inscrutable.<sup>4</sup>

The difference three decades later could not be starker.<sup>5</sup> Suits may be filed online, and parties receive updates through

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<sup>1</sup> Zhou Qi (周琪), *Guangyin Yanzhong Fayuan de Bianqian* (光阴眼中法院的变迁) [The Changes of Courts in the Eyes of Time], RENMIN FAYUANBAO (人民法院报) [PEOPLE’S COURT DAILY] (Sep. 1, 2018, 4:51 PM), <https://www.chinacourt.org/article/detail/2018/09/id/3482084.shtml>.

<sup>2</sup> *Id.*

<sup>3</sup> Neil J. Diamant, *Conflict and Conflict Resolution in China: Beyond Mediation-Centered Approaches*, 44 J. CONFLICT RESOL. 523, 527 (2000).

<sup>4</sup> *Id.*

<sup>5</sup> See Tian Jing (田婧) & Xie Weihui (谢伟辉), *Gaige Kaifang 40 Zhounian Tukan Zhejia Fayuan de Suiyue Bianqian* (改革开放 40 周年 图看这家法院的岁月变迁) [40 Year Anniversary of Reform and Opening Up: Looking at the Changes of This Court by Time from Pictures], SOHU.COM JINGFA WANGSHI (搜狐京法网事) (Oct. 19, 2018, 4:59 PM), [http://www.sohu.com/a/270125722\\_100024666](http://www.sohu.com/a/270125722_100024666); see also Xuqianshi Zhongji Renmin Fayuan (宿迁市中级人民法院) [Suqian Intermediate People’s Court], *Gaige Kaifang 40 Zhounian Shuyang Fayuan: Zhaopian Jianzheng Shidai Bianqian* (改革开放 40 周年 沭阳法院：照片见证时代变迁) [40 Year Anniversary of Reform and Opening Up: Shuyang Court: Witness the Change by Time Through Pictures], NETEASE (网易) (Dec. 19, 2018, 6:35 PM), <http://dy.163.com/v2/article/detail/E3DKTK660514BTM5.html>.

digital platforms that also allow them to inquire about the status of their litigation. When the matter goes to trial, evidence is automatically presented on the oral request of the judge or the participants.<sup>6</sup> The same artificial intelligence system is also capable of sieving out unreliable evidence and detecting contradictions between statements.<sup>7</sup> As the dispute nears a resolution, computers generate draft opinions that relate its background and procedural history. Algorithms for identifying similar fact patterns raise the alarm if a judge's decision veers too far from the norm. And the opinions and outcomes of cases are published on the internet for all to see.



A Beijing Court in the 1990s  
Source:  
Suqian Intermediate People's  
Court 2018



A Shanghai Court in 2019  
Source: Legal Daily, 2019

Of course, China is not alone in technologizing law. Some American state courts take machine predictions of recidivism into account when sentencing criminal defendants.<sup>8</sup> The Singapore judiciary has embraced an Intelligent Courts Transcription System for generating written records of oral proceedings in real time.<sup>9</sup> The Brazilian Superior Tribunal of Justice, for its part, launched Sócrates, an initiative to automate the search for relevant legal materials.<sup>10</sup> And the Estonian

<sup>6</sup> Jiang Wei, *China Uses AI Assistive Tech on Court Trial for First Time*, CHINA DAILY (Jan. 24, 2019, 2:23 PM), <https://www.chinadaily.com.cn/a/201901/24/WS5c4959f9a3106c65c34e64ea.html>.

<sup>7</sup> Wang Qi, *Shanghai Uses Artificial Intelligence System to Streamline Justice*, GLOBAL TIMES (Aug. 27, 2019, 9:05 PM), <http://www.globaltimes.cn/content/1162852.shtml>.

<sup>8</sup> See *State v. Loomis*, 881 N.W.2d 749 (Wis. 2016).

<sup>9</sup> See Kee Oon, *State Courts Workplan 2019*, "State Courts: 2020 and Beyond," SINGAPORE STATE COURTS (Mar. 8, 2019), [https://www.statecourts.gov.sg/cws/Resources/Documents/State\\_Courts\\_Workplan2019\\_KeynoteAddress\(FINAL\).pdf](https://www.statecourts.gov.sg/cws/Resources/Documents/State_Courts_Workplan2019_KeynoteAddress(FINAL).pdf).

<sup>10</sup> *Projeto-piloto do Sócrates, programa de inteligência artificial do STJ, é esperado para Agosto* [Pilot Project of Sócrates, STJ's Artificial Intelligence Program, is Expected for August], MIGALHAS (Apr. 6, 2019, 7:32 PM),

ministry of justice is entertaining the idea of having a robot judge handle small claims.<sup>11</sup> Still, few nations have been as fervent or forceful in digitizing and automating its legal system as the People's Republic has.<sup>12</sup> Out of the 933 lawtech patents registered in 2018, more than half were filed in China.<sup>13</sup> "When it comes to making court decisions available online," write Benjamin Liebman and coauthors, "China is a trendsetter in the authoritarian world, and unusual even among other civil law jurisdictions," and its courts might well "leapfrog" those of other countries into the future of "computerized judging."<sup>14</sup>

Part of the explanation for this phenomenon might lie in China's quest to cement its status as a superpower. As Professor Timothy Wu has observed, "Beijing has made winning the race to artificial intelligence a national obsession, devoting billions of the dollars to the cause . . . ."<sup>15</sup> Achieving such a technological edge, the Chinese government believes, will allow the country to emerge from its century of humiliation and reshape the world order.<sup>16</sup> The technologization of the legal system is a microcosm of China's ambitions to establish itself in the first rank of nations. Rachel Stern and co-authors allude to this perspective when they observe that

*China's push for [artificial intelligence] is an important part of the country's strategic response to slowing economic growth, on the one hand, and motivated by a pervasive belief in nationalist vindication through technological innovation on*

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<https://www.migalhas.com.br/Quentes/17,MI299820,51045->

[ProjetoPiloto+do+Socrates+programa+de+inteligencia+artificial+do+STJ.](https://www.migalhas.com.br/Quentes/17,MI299820,51045-)

<sup>11</sup> *Can AI Be a Fair Judge in Court: Estonia Thinks So*, WIRED (Mar. 25, 2019, 7:00AM), <https://www.wired.com/story/can-ai-be-fair-judge-court-estonia-thinks-so/>.

<sup>12</sup> See Jinting Deng, *Should the Common Law System Welcome Artificial Intelligence: A Case Study of China's Same-Type Case Reference System*, 3 GEO. L. TECH. REV. 223, 228 (2019) ("Unlike the [United States], China has no strong resistance to equipping its courtrooms with algorithmic machines and has, in fact, welcomed them.").

<sup>13</sup> Macro Prudential, *China Leads the Way in Legal Technology Patents, New Figures Show*, FINANCIAL TIMES (Feb. 16, 2019), <https://www.ft.com/content/13ec27bc-304c-11e9-ba00-0251022932c8>.

<sup>14</sup> Benjamin Liebman et al., *Mass Digitization of Chinese Court Decisions: How to Use Text as Data in the Field of Chinese Law*, 8 J. L. & CTS. 177, 180-83 (2020).

<sup>15</sup> Tim Wu, *America's Risky Approach to Artificial Intelligence*, N.Y. TIMES (Oct. 7, 2019), <https://www.nytimes.com/2019/10/07/opinion/ai-research-funding.html>.

<sup>16</sup> Nathan Gardels, *Comment: The US-China Tech Battle is Make-Or-Break*, 36 NEW PERSP. Q. 2, 3 (2019).

*the other. Viewed through this lens, the courts' strides toward algorithmic analytics contribute to the 'first in the world' narrative of technological success poised to become a prominent part of the Party's twenty-first century legitimacy strategy.*<sup>17</sup>

But the great enthusiasm for integrating technology into the legal sphere could also be explained by the inconsistencies and oppositions that pervade justice in the People's Republic. First, courts are straining under the burden of their caseloads as the turn towards legality swells the number of lawsuits while the professionalization of the judicial corps also culls its ranks. Artificial intelligence enhances the speed and consistency of adjudication while online disclosure cultivates public trust in the courts. Second, adherence to legal rules and norms brings order to society but it may also foment dissatisfaction and disrupt relationships. The ensuing governmental imperative for judges to mediate disputes has, however, resulted in coerced settlements and delayed verdicts. Machine predictions of case outcomes, supplied by courts, guide parties to bargain in the shadow of the law, thereby preserving the voluntariness of peace and the sanctity of justice. Third, while the party-state encourages citizens to know the law and use it as their weapon, civil society and activist lawyers may rally behind a legal cause to challenge the ideological hegemony of the party-state. By helping citizens learn the law and claim their rights, databases and applications foster legal consciousness while disintermediating lawyers. To be clear, we are not arguing that the People's Republic has intentionally engineered technology to perfect its brand of socialist legality. The modest suggestion, rather, is that initiatives for administering justice simply, swiftly, and singly have blossomed because they correspond to the demands of the Chinese legal order, a system that privileges above all the maintenance of social harmony and stability.

The Article unfolds in three parts. Part I surveys how technology is being applied to democratize law, expedite legal processes, and superintend judicial decisions. The exposition does not feign exhaustiveness. Rather it systemically details the major functions performed—or at least advertised—by databases, applications, and software that are now proliferating

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<sup>17</sup> Rachel Stern, Ben L. Liebman, Margaret E. Roberts & Alice Z. Wang, *The Challenges of Data-Drive Governance in Contemporary China* (forthcoming in COLUM. J. TRANSNAT'L. L.).

across the country. Part II then elucidates three tensions in the Chinese legal system, namely the opposition between legality and judicial professionalization, between social harmony and the rule of law, and between legal consciousness and party hegemony. In so doing, it suggests how evolving technological capabilities answer some of the dilemmas that characterize justice in the People's Republic today. Finally, Part III presents some results from a survey of approximately one thousand netizens and interviews of over one hundred legal aid seekers. These field studies illuminate popular attitudes, beliefs, and perceptions about legal technology and its practical consequences, thereby furnishing an empirical basis for theorizing about the future of Chinese justice. The normative implications of our research findings are also broached and discussed.

#### I. THE TECHNOLOGIZATION OF THE CHINESE LEGAL SYSTEM

In January 2016, Zhou Qiang, the president of the Chinese Supreme People's Court (SPC) introduced the concept of smart courts (*zhihui fayuan*).<sup>18</sup> Smart courts “make full use of technologies such as the internet, cloud computing, big data, artificial intelligence and so on, to promote the modernization of trial system and judgment capability . . . .”<sup>19</sup> They are, as the SPC later elaborated, “a form of organization, construction, and operation whereby the people's courts take full advantage of advanced information systems to support the online processing of all services, the disclosure of the entire legal process as mandated by law, and comprehensive all-around intelligent services, so as to realize fair justice and justice for the people.”<sup>20</sup>

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<sup>18</sup> Luo Shuqin (罗书臻), *Jianchi Xuqiu he Wenti Daoxiang Pojie Nanti Buqi Duanban Tuijin Renmin Fayuan Xinxihua Jianshe Zhuanxing Shengji* (坚持需求和问题导向 破解难题补齐短板 推进人民法院信息化建设转型升级) [Insist upon Directing Demand and Problems. Tackle Conundrums and Fix Shortcomings. Promote the People's Courts' Upgrade and Transition into Digitalization], ZHONGGUO FAYUAN WANG (中国法院网) [CHINACOURT.ORG] (Jan. 30, 2016, 9:11 AM), <https://www.chinacourt.org/article/detail/2016/01/id/1801764.shtml>.

<sup>19</sup> Yu Zirui (于子茹), *Chen Zhiyuan: Zhihui Fayuan Rang Xinxu Duo Paolu Rang Qunzhong Shao Paotui* (陈志远：智慧法院让信息多跑路 让群众少跑腿) [Chen Zhiyuan: Smart Courts Allows Information to Cover More Ground and the People to Run Less], XINHUA NET (新华网) (Mar. 12, 2017, 12:27 PM), <https://www.chinacourt.org/article/detail/2017/03/id/2577050.shtml>.

<sup>20</sup> *Zuigao Renmin Fayuan Guanyu Jiakuai Jianshe Zhihui Fayuan De Yijian* (最高人民法院关于加快建设智慧法院的意见) [The Opinions of the



The SPC's efforts in this regard were endorsed by no less than President Xi Jinping who, in July 2017, urged "adherence to the laws" and called for "integration between deepening judicial reform and the application of modern technology so as to continuously perfect and develop a socialist legal system with Chinese characteristics."<sup>21</sup> Though promoted at the highest echelons of power, the technologization of the justice system does not always follow a detailed national blueprint. Rather, the ways and means of deploying technology in law—as in other domains—<sup>22</sup>are usually left to the initiative of local authorities and the ingenuity of private actors. The role of the central government is often exhortatory and facilitative.

Pursuant to the call for the development of smart courts, internet platforms and artificial intelligence systems have proliferated in the legal sphere. Whether they are offered by courts or companies, these innovations strive to simplify the litigation process for citizens and lawyers, help judges render their decisions more quickly and fairly, and disseminate legal information and advice to the general public. Some of them have achieved official recognition and are being emulated across the nation. Others remain experiments run on a modest scale. But together, they begin to transform how law and legal institutions operate in China.

#### A. *Advising Disputants, Simplifying Litigation*

The financial, logistical, and technical difficulties of filing a case have always deterred many from turning to the courts. For a long time, disputants were facing overlong waiting times and complicated and miscellaneous procedures to file a

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Supreme People's Court concerning Accelerating the Establishment of Smart Courts] (promulgated by the Supreme People's Court, Apr. 12, 2017, effective Apr. 12, 2017) SUP. PEOPLE'S CT. GAZ., NOV. 10, 2017, Art. 1 (1), at 19 (China), *available at* <http://gongbao.court.gov.cn/Details/5dec527431cdc22b72163b49fc0284.html>.

<sup>21</sup> Nie Chenjing (聂晨静) & Zhang Mingyu (张明宇), *Xi Jinping: Jianding Buyi Tuijian Sifa Tizhi Gaige Jianding Buyi Zou Zhongguo Tese Shehui Zhuyi Fazhi Daolu* (习近平：坚定不移推进司法体制改革 坚定不移走中国特色社会主义法治道路) [Xi Jinping: Firmly Advance the Reform of the Judicial System, Firmly Take the Path of Socialism with Chinese Characteristics], XINHUA NET (新华网) (July 10, 2017, 5:28 PM), [http://www.xinhuanet.com/politics/2017-07/10/c\\_1121295680.htm?agt=2/](http://www.xinhuanet.com/politics/2017-07/10/c_1121295680.htm?agt=2/).

<sup>22</sup> Matt Sheehan, *How China's Massive AI Plan Actually Works*, MACRO POLO (Feb. 12, 2018), <https://macropolo.org/analysis/how-chinas-massive-ai-plan-actually-works/>.

complaint in court.<sup>23</sup> The parties and attorneys had to make multiple trips to the court to follow up or submit supplementary materials before a complaint was finally accepted.<sup>24</sup> To attain a high case closing rate, some courts even put a daily cap on the number of complaints that can be submitted in its case filing hall or left complaints in limbo during busy seasons.<sup>25</sup> Legal technology are starting to erode these barriers.

At the bottom of the dispute pyramid, artificial intelligence helps litigants recognize harms and articulate claims.<sup>26</sup> Although several robots have been tested,<sup>27</sup> the most widely adopted one appears to be Xiao Fa. Installed in over a hundred courts, Xiao Fa dispenses knowledge about substantive and procedural law.<sup>28</sup> To educate the public, Xiao Fa explains complicated legal terms in everyday terms.<sup>29</sup> To calm disputants,

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<sup>23</sup> Beijing Kainuo Lushi Shiwusuo (北京凯诺律师事务所) [Beijing Kainuo Law Firm], *Naxie Yuanyin hui Daozhi Lian Nan Ne? Ruhe Pojie "Lian Nan" de Wenti* (哪些原因会导致立案难呢? 如何破解“立案难”的问题) [What are the Factors Causing the “Difficulties of Filing a Case”? How to Tackle the “Difficulties of Filing a Case”], XINLANG (新浪) [SINA.COM] (May 8, 2019, 12:04 PM), [https://k.sina.com.cn/article\\_5225915613\\_1377d24dd02700iodyd.html?from=news&subch=onews](https://k.sina.com.cn/article_5225915613_1377d24dd02700iodyd.html?from=news&subch=onews).

<sup>24</sup> *Id.*

<sup>25</sup> Xu Xin (徐昕), *Jiejue Lian Nan Yao Lizu Zhongguo Guoqing* (解决“立案难”要立足中国国情) [Tackling the “Difficulties of Filing a Case” Needs to be Based on China’s Situation], 1 ZHONGGUO SHENPAN (中国审判) [CHINA ADJUDICATION] 10, 11 (2007); *see also*, Zhang Chen (张晨), *2020nian Quanguo Shixian Wangshang Lian he Kuayu Lian* (2020 年全国实现网上立案和跨区域立案) [Online Case Filing and Cross-regional Case Filing will be Achieved Nationwide in 2020], FAZHI RIBAO (法制日报) LEGAL DAILY (June 14, 2019, 7:48 AM), [http://www.xinhuanet.com/legal/2019-06/14/c\\_1124620759.htm](http://www.xinhuanet.com/legal/2019-06/14/c_1124620759.htm).

<sup>26</sup> Cao Yin, *Courts Embrace AI to Improve Efficiency*, CHINA DAILY (Nov. 16, 2017, 7:55 AM), [http://www.chinadaily.com.cn/china/2017-11/16/content\\_34595221.htm](http://www.chinadaily.com.cn/china/2017-11/16/content_34595221.htm).

<sup>27</sup> Xiao Yu, developed by the Yushan Primary People's Court in Ma'anshan, Anhui Province, is one example. Zhang Ying (张颖), *Jinri Shuofa Sa Beining Duihua Quanguo Shouge Daosu Jiqiren Xiaoyu he Tade Baba* (今日说法|撒贝宁对话全国首个导诉机器人“小雨”和她的“爸爸”) [Today's Statement | Sa Beining Talks to the First Pilot Robot "Xiao Yu" and Her "Dad"], XINLANG (新浪) [SINA.COM] (Mar. 12, 2017, 5:44 PM), <http://news.sina.com.cn/o/2017-03-12/doc-ifychavf2500227.shtml> (Xiao Yu, developed by the Yushan Primary People's Court in Ma'anshan, Anhui Province, is one example).

<sup>28</sup> The robots themselves are manufactured and sold by Sanbot, SANBOT, <http://en.sanbot.com/industrial/public-service> (last visited Nov. 10, 2020). Cao Yin, *supra* note 26.

<sup>29</sup> Cao Yin, *supra* note 26.

Xiao Fa speaks in a child's voice.<sup>30</sup> As explained by Du Xiangyang, the founder of Aegis Data, the robot addresses a societal need for cheap and authoritative advice.<sup>31</sup> “Most answers provided by search engines are based on other people's experiences, and are not professional opinions, while consulting a lawyer costs a lot of money.”<sup>32</sup> By installing a robot, courts are able to freely dispense legal knowledge tailored to the locality's circumstances. Consulting Xiao Fa, however, requires a visit to the courthouse. To save members of the public the time and expense of travel, Aegis also maintains an online platform offering legal information and services.<sup>33</sup> Hosted on WeChat—one of China's most used mobile phone applications—Aegis's cloud computing platform reportedly “receives more than 30,000 requests every day,” “provid[ing] immediate answers for 85 percent of the questions.”<sup>34</sup>

Grievants who are considering legal action might also find automated litigation tools handy. Lining the self-service area of many Beijing courts, for instance, are one-stop terminals that estimate litigation costs and draft complaints.<sup>35</sup> Based on self-administered questionnaires, these terminals produce reports estimating the risk of an unsuccessful suit and describing potential litigation costs, such as harm to family relationships,

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<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Fei Qiulin (费秋林), *Xicheng Fayuan Xinsusong Fuwu Zhongxin Luocheng, Dongdong Shouzhi Jiuke Wancheng Susong Fuwu* (西城法院新诉讼服务中心落成, 动动手指就可完成诉讼服务) [New Litigation Service Centre is Established in Xicheng Court, Litigation Services Can be Completed by Moving Fingers], SOHU BEIJING XICHENG (搜狐北京西城) [SOHU.COM BEIJING CITY WEST] (Nov. 30, 2018, 5:45 PM), [https://www.sohu.com/a/278924837\\_120025792](https://www.sohu.com/a/278924837_120025792); see also Wei Wenxin (魏文欣), *Susong Fengxian Pingguji zai Beijing Fangshan Shanggang* (诉讼风险评估机在北京房山上岗) [Litigation Risk Assessment Machines Started Their Work in the Fangshan District of Beijing], BEIJING RIBAO (北京日报) [BEIJING DAILY], Aug. 14, 2019, [http://www.cnr.cn/bj/jrbj/20190814/t20190814\\_524730629.shtml](http://www.cnr.cn/bj/jrbj/20190814/t20190814_524730629.shtml); see also *Tanfang Beijing Chaoyang Fayuan: Weixin Kuaisu Lian Susong Fengxian Zizhu Pinggu* (探访北京朝阳法院: 微信快速立案 诉讼风险自助评估) [Visit the Chaoyang People's Court of Beijing: Quick Complaint Filing on WeChat, Self Evaluate Risk of Litigation], ZHONGGUO RIBAO WANG (中国日报网) [CHINA DAILY] (Feb. 27, 2018, 9:02 AM), <https://baijiahao.baidu.com/s?id=1593513970807412165&wfr=spider&for=pc>.

time, money, and reputation.<sup>36</sup> The reports also enumerate applicable statutes, identify related cases, and list the documents required at each stage of the proceedings.<sup>37</sup> If a party is inclined to mediate, a judge or a mediator will host a conference in which both sides can present evidence, negotiate, and enter into a settlement agreement.<sup>38</sup> If a party elects adjudication, a complaint generator helps formulate the claim, free of charge.<sup>39</sup> These and analogous tools are being rolled out in courts around the country.<sup>40</sup> Interviewed by the local paper in the hall of the Wancheng District People's Court in Nanyang City of Henan Province, a litigant praised its litigation guidance machine as being "so useful." "I know little about law," said Mr. Li, holding a copy of his litigation risk assessment report. "The report explains everything clearly and even has the judgments of similar cases. Now I understand how to litigate without spending money to consult a lawyer."<sup>41</sup>

<sup>36</sup>See *Susong Fengxian Pinggu Xitong* (诉讼风险评估系统) [Litigation Risk Assessment System], SHOWINFO, <http://showinfo.com.cn/products/litigationRisk.html> (last visited Nov. 10, 2020) (For example, a party who is filing for divorce may need to answer questions, such as whether it is their first time suing for divorce, whether their spouse has engaged in domestic violence, gambling or drug use, and whether the dispute involves any assets division).

<sup>37</sup> Wei Wenxin, *supra* note 35.

<sup>38</sup> Jiang Shanshan (姜珊珊), *Beijing Gaoyuan: 17 Wanqi Anjian Tongguo Duoyuan Tiaojie Sucui* (北京高院: 17 万起案件通过多元调解速裁) [High People's Court of Beijing: 170 Thousand Cases were Decided by Various Mediation Approaches in an Expedited Proceeding], SINLANG SIFA PENGBAI XINWEN (新浪司法 澎湃新闻) [SINA CIVIL LAW THE PAPER] (Nov. 7, 2018, 2:43 PM), [news.sina.com.cn/sf/news/fzrd/2018-11-07/doc-ihmutuea7850626.shtml](http://news.sina.com.cn/sf/news/fzrd/2018-11-07/doc-ihmutuea7850626.shtml).

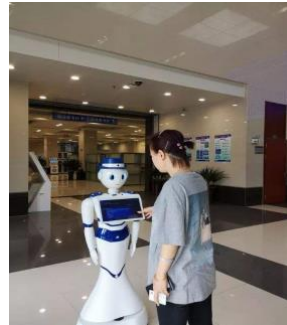
<sup>39</sup> *Tanfang Beijing Chaoyang Fayuan: Weixin Kuaisu Lian Susong Fengxian Zizhu Pinggu* (探访北京朝阳法院: 微信快速立案 诉讼风险自助评估) [Visit the Chaoyang People's Court of Beijing: Quick Complaint Filing on WeChat, Self Evaluate Risk of Litigation], *supra* note 35.

<sup>40</sup> Zhao Jingqing (赵敬清), *Susong Fengxian Pinggu Nalizhao Dashuju Zhuli Fenxi Zaozhidao* (诉讼风险评估哪里找 大数据助力分析早知道) [Where to Find Litigation Risk Assessment? Big Data Helps to Analyze and Know Early], THE PAPER (澎湃新闻) (May 23, 2020, 6:01 AM), [https://www.thepaper.cn/newsDetail\\_forward\\_7522531](https://www.thepaper.cn/newsDetail_forward_7522531); see also Ji Zhangying (季张颖), *Xuhuiqu Renmin Fayuan Shangxianle Quanshi Shouge Susong Fengxian Pinggu Xitong* (徐汇区人民法院上线了全市首个诉讼风险评估系统) [Xuhui District People's Court Adopted the First Litigation Risk Assessment System in the Municipality], DONGFANG WANG (东方网) [EASTDAY] (May 22, 2019, 9:53 AM), [http://city.021east.com/eastday/city/gk/20190522/u1a14850527\\_K30062.html](http://city.021east.com/eastday/city/gk/20190522/u1a14850527_K30062.html).

<sup>41</sup> Wang Yong (王勇), *Da Guansi Fengxian Dabuda Dehua Duoshaoqian*



Litigation Risk Assessment and  
Complaint Generator Terminals in  
Chaoyang Court of Beijing  
Source: Chinanews, 2018



*Xiao Fa* in the High People's Court of  
Anhui Province  
Source: High People's Court of Anhui  
Province NetEase Account, 2018

When the complaint is ready, it may be filed in person or through WeChat. Cases will be electronically routed to the court having jurisdiction over the matter, even if that court is based in a different part of the country.<sup>42</sup> This system was piloted in Zhejiang Province and fully implemented in all basic and intermediate people's courts as of December 2019.<sup>43</sup> A total of 19,471 cases were handled through the cross-regional filing mechanism from the full implementation of the program in July 2019 and December 2019.<sup>44</sup>

Filing of the complaint is merely the beginning of the legal process and as the case progresses, there will be fees to be paid, documents to be exchanged, deadlines to be observed, and pauses in between. Since December 30, 2015, the SPC has maintained an online portal for lawyers to access casefiles, inquire about statuses, reschedule appointments in the event of a time conflict, contact judges, and serve legal documents.<sup>45</sup> The apex court is also piloting a unified nationwide platform for

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*Xuyao Duochang Shijian Susong Fengxian Pingguji Shadouzhidao* (打官司风险大不大? 得花多少钱? 需要多长时间? “诉讼风险评估机”啥都知道) [How Big Would the Risk of Litigation Be? How Much Would It Cost? How Much Time Would It Require? The Litigation Risk Assessment Machine Knows Everything], NANYANG DAILY (南阳日报) (Dec. 22, 2019, 5:39 PM), [http://www.longtengnanyang.com/news\\_75479](http://www.longtengnanyang.com/news_75479).

<sup>42</sup> THE SUPREME PEOPLE'S COURT OF THE PEOPLE'S REPUBLIC OF CHINA, ZHONGGUO FAYUAN DE HULIANWANG SIFA (中国法院的互联网司法) [CHINESE COURTS AND INTERNET JUDICIARY] 69 (2019).

<sup>43</sup> Press Release, Li Guangyu (李广宇), News Spokesman, The Supreme People's Court of The People's Republic of China, (Dec. 25, 2019), <http://www.court.gov.cn/zixun-xiangqing-212371.html>.

<sup>44</sup> *Id.*

<sup>45</sup> Li, *supra* note 43.

parties and lawyers to receive case-related documents through email, phone messages, and instant messaging applications.<sup>46</sup> The lower courts have also developed similar channels for facilitating service on litigants or their representatives.<sup>47</sup> By the end of 2018, 2,995 courts across the country provided litigation services through their official websites while 1,623 courts had launched their own mobile applications.<sup>48</sup>

More ambitious still is the concept of Mobile Courts that is now being tested in 12 provinces, including Beijing.<sup>49</sup> Brandishing the slogan “let data cover more ground, let litigants run less,” Mobile Courts replicate physical tribunals in cyberspace by moving proceedings out of courthouses into mobile phones. Built into Mobile Courts are many of the services found on the internet platforms of individual courts, such as question answering, case evaluation, and electronic filing and service. But Mobile Courts go further. By combining remote audio and video capture on the one hand and facial recognition and e-signature technologies on the other, Mobile Courts enable parties to engage in discovery, mediation or trial through WeChat. As of October 31, 2019, the mini-program had 1.16 million registered litigants and 73,200 registered lawyers, who among them completed 3.14 million litigation activities through Mobile Courts.<sup>50</sup> The experience of Zhejiang Province, the SPC claims, is illustrative of the convenience of “complaining with your fingertips and dealt with in your palm.”<sup>51</sup>

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<sup>46</sup>Minshi Susong Chengxu Fanjian Fenliu Gaige Shidian Shishi Banfa (民事诉讼程序繁简分流改革试点实施办法) [Implementation Measures for the Pilot Reform of Triaging Simplified and Complicated Civil Procedures], RENMIN FAYUANBAO (人民法院报) [PEOPLE'S COURT DAILY] (Jan. 16, 2020), [http://rmfyb.chinacourt.org/paper/html/2020-01/16/content\\_164459.htm?div=-1](http://rmfyb.chinacourt.org/paper/html/2020-01/16/content_164459.htm?div=-1); THE SUPREME PEOPLE'S COURT OF THE PEOPLE'S REPUBLIC OF CHINA, *supra* note 42 at 76.

<sup>47</sup> See THE SUPREME PEOPLE'S COURT OF THE PEOPLE'S REPUBLIC OF CHINA, *supra* note 42 at 68.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 70. See Alison Xu, *Chinese Judicial Justice on the Cloud: A Future Call or a Pandora's Box? An Analysis of the 'Intelligent Court System' of China*, 26 INFO. & COMM. TECH. L. 59, 62 (2017) (distinguishing between the “readable,” “writable,” and “executable” stages of Chinese judicial reform).

<sup>50</sup> *Id.* at 70.

<sup>51</sup> *Zuigao Renmin Fayuan Gongzuo Baogao* (最高人民法院工作报告) [Work Report of The Supreme People's Court], XINHUA WANG (新华网) [XINHUA NET], Mar. 19, 2019, available at [http://www.xinhuanet.com/politics/2019-03/19/c\\_1124253887.htm](http://www.xinhuanet.com/politics/2019-03/19/c_1124253887.htm); Zheng Xiaowei (郑晓维), *Zhejiang Jiaojiang Yidong Fating Zhijiansu Zhangshangban Tiaojie Zuikuai 20 Fenzhong* (浙江椒江“移动”法庭: 指尖诉掌上办 调解最快 20 分钟) [Zhejiang Jiaojiang “Mobile” Court:



SPC Online Portal for  
Litigation Services



Mobile Courts Platform for  
Zhejiang Province

### B. Facilitating Administration, Guiding Adjudication

Besides making the legal process more accessible and less costly for disputants, technology also helps judges dispose of cases quickly and accurately. On the one hand, artificial intelligence substitutes for human labor by performing mundane tasks that require neither knowledge nor craft. On the other hand, it complements human reason by spotting outliers or patterns that might otherwise be lost in a mass of data.

Machines relieve the burden on court personnel by transcribing hearings, verifying the authenticity of documents, sieving through evidence, and drafting orders and judgments.<sup>52</sup>

Complaining with Your Fingertips and Dealt with in Your Palm, Fastest Mediation is 20 Minutes], ZHONGGUO XINWEN WANG (中国新闻网) [CHINA NEWS] (Feb. 13, 2020, 8:46 PM), <http://www.zj.chinanews.com/jzkzj/2020-02-13/detail-1fztrass1773226.shtml>; Huang Lanshu (黄兰舒), *Yidong Weifayuan Rang Shuju Duopaolu Rang Qunzhong Shao Paotui* (移动微法院让数据多跑路, 让群众少跑腿) [The Mobile Micro-court Allows Data to Run More and the People to Run Less], THE PAPER (澎湃新闻) (Nov. 1, 2019, 7:48 PM), [https://www.thepaper.cn/newsDetail\\_forward\\_4858610](https://www.thepaper.cn/newsDetail_forward_4858610).

<sup>52</sup> See, e.g., *Suzhoushi Zhongji Renmin Fayuan Gongzuo Baogao* (苏州市中级人民法院工作报告) [Work Report of Suzhou Intermediate People's Court], SUZHOU INTERMEDIATE PEOPLE'S COURT (苏州市中级人民法院), Sep. 5, 2019, available at <http://www.zjrmfy.suzhou.gov.cn/fypage/toContentPage/swgk/82a07a4869231983016cff516abc03e8>; *Jiangsusheng Kunshanshi Renmin Fayuan Dazao*

In May 2018, the SPC introduced a smart court application suite engineered by Hua Yu that “was able to effectively reduce at least 75 percent of time judges spent on pre-trial document review” and “automatically generate over 70 percent of adjudicatory documents.”<sup>53</sup>

Local courts have also heeded the call to automate their adjudicatory processes. New to the Zhejiang High People’s Court is a virtual judicial assistant who specializes in financial loan disputes—Xiao Zhi. Xiao Zhi’s duties extend beyond administrative tasks like scheduling. Xiao Zhi supports judges by analyzing case filings, summarizing points of contention as they are raised during trial, evaluating evidence, calculating awards, and drafting judicial documents on the fly.<sup>54</sup> A timeline of events is also constructed for the court’s easy reference and Xiao Zhi helps locate points in the trial video based on text queries. Aided by Xiao Zhi, a case could be heard and decided in less than 30 minutes from start to finish.

Not too far away, in Shanghai, the 206 System locates and displays the evidence to which participants referred while generating real time transcripts of their statements.<sup>55</sup> When the Shanghai No. 2 Intermediate People’s Court publicly unveiled these functionalities at a robbery and murder trial in January

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*Wuzhijia Shenpan Guanli Qiandeng Fangan Shifang Zhihui Shenpan Xindongneng* (江苏省昆山市人民法院——打造无纸化审判管理“千灯方案” 释放智慧审判新动能) [Kunshan People’s Court, Jiangsu Province—Create the “Thousand Lamps Plan” for Paperless Trial Management and Unleash a New Drive for Smart Trials], RENMIN FAYUANBAO (人民法院报) [PEOPLE’S COURT DAILY] (July 26, 2019, 9:29 AM), <http://www.court.gov.cn/fabu-xiangqing-173402.html>.

<sup>53</sup> Han Xuguang (韩绪光), *Xinyidai Zhihui Fayuan Yingyong Xitong Shangxian 70% Yishang Tingshen Wenben Ke Zidong Shengcheng* (新一代智慧法院应用系统上线 70% 以上庭审文本可自动生成) [The New Generation of Smart Courts Application System is Live, Over 70 Percent of Adjudicatory Documents Can be Automatically Generated], ZHONGGUO FAYUAN WANG (中国法院网) [CHINACOURT.ORG] (May 24, 2018, 4:17 PM), <https://www.chinacourt.org/article/detail/2018/05/id/3316626.shtml>.

<sup>54</sup> Ma Muqing (马牧青), *Zhejiang AI Faguan Zhu Minjian Jiedai Jiufen Shixian Quanliucheng Zhishen* (浙江“AI 法官”助民间借贷纠纷实现全流程智审) [Zhejiang “AI judge” Implementing Smart Trials in Civil Lending Disputes], ZHONGGUO XINWEN WANG (中国新闻网) [CHINA NEWS] (Dec. 30, 2019, 9:52 AM), <http://www.zj.chinanews.com/jzkzj/2019-12-30/detail-1fzscnqu9301636.shtml>.

<sup>55</sup> Zuo Weimin (左卫民), *Guanyu Falu Rengong Zhineng Zai Zhongguo Yunyong Qianjing de Ruogan Sikao* (关于法律人工智能在中国运用前景的若干思考) [Some Thoughts on the Application of Legal Artificial Intelligence in China], 12 TSINGHUA CHINA L. REV. 108, 113 (2018).



2019, deputy chief judge Huang Boqing praised the software for “helping them get better results in lesser time.”<sup>56</sup> According to developer iFlyTek, as of November 2020, its speech recognition algorithm is now used by over 10,000 courts in 31 provinces.<sup>57</sup> iFlyTek is not the only company delivering technology solutions to the judiciary. Ledict, for example, has built an automated transcription system that is not only synchronous but also self-correcting.<sup>58</sup> The ability of this system to recognize case information is touted at over 95%; the completeness of the transcripts might reach 100%.<sup>59</sup> Adopted by the Liaoning High Court, automated transcription speeds up the wheels of justice, especially in controversial and complex cases.<sup>60</sup>



“Xiao Zhi” assisting adjudication in a Hangzhou court  
Source: Hangzhou Wang, 2019



A prosecutor referring to evidence using the Shanghai's 206 system  
Source: Eastday, 2019

Artificial intelligence does not merely conserve judicial time and resources. It may also improve the consistency and quality of adjudication with its accurate recommendation of related laws and similar cases and automatic generation and

<sup>56</sup> Wu Lei, *AI-aided Justice: How Technology Is Changing Chinese Courts*, CGTN (Feb. 23, 2019, 2:29 PM), <https://news.cgtn.com/news/3d3d414f7a67444f32457a6333566d54/index.html>.

<sup>57</sup> Zhihui Fayuan (智慧法院) [Smart Courts], KEDA XUNFEI (科大讯飞) [iFLYTEK], [http://www.iflytek.com/zf/fy?fbclid=IwAR1JZMeTe\\_c4Nsh3\\_aub3gYWuzn0jQvt3lPqle29A3y6r\\_pQpD9yeYAG4QI](http://www.iflytek.com/zf/fy?fbclid=IwAR1JZMeTe_c4Nsh3_aub3gYWuzn0jQvt3lPqle29A3y6r_pQpD9yeYAG4QI) (last visited November 10, 2020).

<sup>58</sup> Liaoning Zhihui Fayuan (辽宁智慧法院) [Liaoning Smart Courts], *Quansheng 128jia Fayuan Shixian Zhineng Yuyin Yingyong Quanfugai, Chuangzhao Liaoning Zhihui Fayuan Xingaidu* (全省 128 家法院实现智能语音应用全覆盖, 创造辽宁“智慧法院”新高度) [All 128 Courts in the Province Have Achieved Full Coverage of AI Voice Applications, Bringing Liaoning “Smart Courts” to a New Height], WECHAT (Jan. 20, 2020), <https://mp.weixin.qq.com/s/fZYa9Zivu7yk0JmbaxoicQ>.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

correction of judicial documents.<sup>61</sup> As a collaboration between the SPC and Gridsum Technology, Faxin forages a public database of regulations, judicial documents, cases, and academic research to define the legal contours of a dispute.<sup>62</sup> Faxin is deployed in the SPC as well as the Jiangsu<sup>63</sup> and Shanghai<sup>64</sup> High Courts. Since 2018, the SPC has also made the “Similar Case Intelligent Recommendation System” available to judges, lawyers, and members of the public through the China Justice Big Data Service Platform.<sup>65</sup> As its name suggests, the system recommends similar cases based on the facts, the nature of the dispute, and the statutes implicated.<sup>66</sup> Many local courts, due to the underdevelopment of their own case research system, have been using the systems developed by external commercial companies.<sup>67</sup> The Beijing courts employ Smart Judge, a machine

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<sup>61</sup> THE SUPREME PEOPLE’S COURT OF THE PEOPLE’S REPUBLIC OF CHINA, *supra* note 42, at 80.

<sup>62</sup> Yang Qing (杨青), *Zuigaofa Gongzuo Baogao Reci Zhihui Fayuan Daohang Xitong Faxin* (最高法院工作报告热词: 智慧法院导航系统 法信) [Supreme Court Work Report Hot Words: Wisdom Court Navigation System Law Letter], ZHONGGUO FAYUAN WANG (中国法院网) [CHINACOURT.ORG] (Mar. 10, 2018, 9:46 AM), <https://www.chinacourt.org/article/detail/2018/03/id/3225406.shtml>; *see also* THE SUPREME PEOPLE’S COURT OF THE PEOPLE’S REPUBLIC OF CHINA, *supra* note 42, at 80; *see also* Lin Zizhen, Wang Yiyin, & Teng Jingxuan, *Could AI Transform China’s Legal System?*, CAIXIN, Dec. 11, 2017, <https://www.caixinglobal.com/2017-12-11/could-ai-transform-chinas-legal-system-101183154.html>.

<sup>63</sup> *Faxin zai Jiangsusheng Gaoji Renmin Fayuan zuo Quansheng Fayuan Peixun* (“法信”在江苏省高级人民法院做全省法院培训) [Faxin Trained Courts across the Province in the High People’s Court of Jiangsu], RENMIN FAYUAN CHUBAN JITUAN (人民法院出版集团) [COURT BOOK] (July 8, 2016, 6:07 PM), <http://www.courtbook.com.cn/fxdt/29649.jhtml>.

<sup>64</sup> *Faxin zai Shanghai Shi Gaoji Renmin Fayuan Yanshi Xuanjiang* (“法信”在上海市高级人民法院演示宣讲) [Faxin Presented and Gave a Speech at the High People’s Court of Shanghai], RENMIN FAYUAN CHUBAN JITUAN (人民法院出版集团) [COURT BOOK] (July 29, 2016, 6:07 PM), <http://www.courtbook.com.cn/fxdt/29650.jhtml>.

<sup>65</sup> Jiang Ping (姜萍), *Zuigaofa Zhihui Fayuan Daohang Xitong he Leian Zhineng Tuisong Xitong Jintian Shangxian* (最高法院智慧法院导航系统和类案智能推送系统今天上线) [The SPC Adopted the Smart Courts Navigation System and Similar Case Recommendation System Today], YANG GUANG WANG (央广网) [CHINA NATIONAL RADIO] (January 5, 2018, 7:11 PM), [http://china.cnr.cn/gdgg/20180106/t20180106\\_524089319.shtml](http://china.cnr.cn/gdgg/20180106/t20180106_524089319.shtml); *see also* China Justice Big Data Service Platform, <http://data.court.gov.cn/pages/caseAnalysis.html> (last visited Nov. 3, 2020).

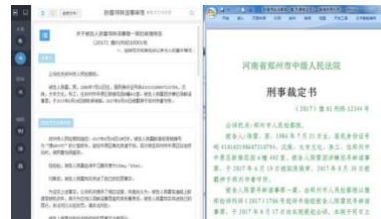
<sup>66</sup> *Id.*

<sup>67</sup> Zuo Weimin (左卫民), *Ruhe Tongguo Rengong Zhineng Shixian Leian Leipian* (如何通过人工智能实现类案类判) [How to Ensure Similar Cases

that simulates the judicial thought process.<sup>68</sup> The software identifies the legal questions presented by a case, retrieves materials germane to their resolution, and recommends a disposition.<sup>69</sup> Similarly, Hainan judges are being encouraged by their provincial high court to adopt an “intelligent system” that combines “natural language processing, knowledge graphs[,] and deep learning” to distill the essence of a case and formulate a judgment based on past decisions.<sup>70</sup> Praised by the SPC as a model to follow, the practice is said to enhance the uniformity of criminal sentences and halve the time to judgment.<sup>71</sup>



Judgment generation system adopted by an intermediate court in Chengdu  
Source: People's Court Daily, 2018



Judgment generation system adopted by a basic people's court in Henan  
Source: Henan's Court Litigation Services Network, 2017

### C. Supervising Judges, Monitoring Courts

Finally, technology is also enlisted to keep an eye on judges and courts. Internally, some courts are using the very algorithms that identify and analyze similar cases to detect

are Treated Similarly by Artificial Intelligence], 2 CHINA L. REV. 26 (2018).

<sup>68</sup> Yu Guiqing (余贵清), Li Xiang (李响), Sun Bing (孙冰) & Wu Juan (吴娟), *Jieli Dashuju Zhihui Zu Faguan Beijing Fayuan Ruifaguan Xitong* (借力大数据 智慧助法官 – 北京法院睿法官系统) [Big Data Lends Strength to Smartly Assist Judges – The Smart Judge System of Beijing Courts], ZHONGGUO FAYUAN XINXIHUA FAZHAN BAOGAO (中国法院信息化发展报告) [ANNUAL REPORT ON INFORMATIZATION OF CHINESE COURTS] n.2 (LI LIN (李林) ET AL. EDS.) B. 21 (2018), available at [http://www.raduga.com.cn/skwx\\_eypt/BookReading.aspx?ID=2630](http://www.raduga.com.cn/skwx_eypt/BookReading.aspx?ID=2630).

<sup>69</sup> *Id.*

<sup>70</sup> Wang Zhuhua (王祝华), *Bimian Tongan Butongpan Hainan Laile Wei Ai Faguan* (避免同案不同判海南来了位 AI “法官”) [To Avoid Same Cases Being Decided Differently, an AI Judge Came to Hainan Province], KEJI RIBAO (科技日报) [SCI. AND TECH. DAILY], Apr. 15, 2019, at 8, [http://digitalpaper.stdaily.com/http\\_www.kjrb.com/kjrb/html/2019-04/15/content\\_419177.htm](http://digitalpaper.stdaily.com/http_www.kjrb.com/kjrb/html/2019-04/15/content_419177.htm); see also Yuan Shenggao, *AI-assisted Sentencing Speeds Up Cases in Judicial System*, CHINA DAILY (Apr. 18, 2019, 7:20 AM), [http://www.chinadaily.com.cn/cndy/2019-04/18/content\\_37459601.htm](http://www.chinadaily.com.cn/cndy/2019-04/18/content_37459601.htm).

<sup>71</sup> *Id.*

anomalies in judicial outcomes.<sup>72</sup> When adapted for this purpose, the machine draws supervisory attention to decisions that lie outside the bounds set by past cases. “Abnormal judgment warnings” are principally issued in the field of criminal law to police the disparity between sentences.<sup>73</sup>



Abnormal judgment warnings system deployed by a Shanghai court  
Source: Shanghai Judicial Think Tank Sohu Account, 2018

Externally, courts are now subject to “mass supervision”<sup>74</sup> as more of judicial processes and outputs are publicly digitized. The SPC has established four official websites as the cornerstones of open justice.<sup>75</sup> Information about case status is displayed on China Judicial Process Information Online, judicial proceedings are broadcast on China Trial Online, and consumption restriction orders are announced on China Enforcement Information Online. Since 2013, all courts, high and low, have been required to publish their dispositions on China Judgments Online.<sup>76</sup> Today, China Judgment Online

<sup>72</sup> Meng Yu & Guodong Du, *Why Are Chinese Courts Turning to AI?*, THE DIPLOMAT, Jan. 19, 2019, <https://thediplomat.com/2019/01/why-are-chinese-courts-turning-to-ai/>; see also Deng, *supra* note 12, at 252.

<sup>73</sup> Yu & Du, *supra* note 72.

<sup>74</sup> See Joel Andreas & Yige Dong, “Mass Supervision” and the Bureaucratization of Governance in China, TO GOVERN CHINA: EVOLVING PRACTICES OF POWER 123 (Vivienne Shue & Patricia M. Thornton eds., 2017) (exposition of the concept of mass supervision).

<sup>75</sup> THE SUPREME PEOPLE’S COURT OF THE PEOPLE’S REPUBLIC OF CHINA, *supra* note 42, at 71.

<sup>76</sup> Zuigao Renmin Fayuan Guanyu Renmin Fayuan zai Hulanwang Gongbu Caipan Wenshu de Guiding (最高人民法院关于人民法院在互联网公布裁判文书的规定) [Provisions of the Supreme People’s Court on the Issuance of Judgments on the Internet by the People’s Courts] (promulgated by the Sup. People’s Ct., Nov 21, 2013, effective Jan. 1, 2014), ZUIGAO RENMIN FAYUAN (最高人民法院) [SUP. PEOPLE’S CT.], Nov 29, 2013, (China),

contains more than 80 million judicial decisions and has been visited more than 37 billion times, making it the world's largest repository of legal cases.

## II. THREE TENSIONS IN CHINESE JUSTICE

The reach and sophistication of the described technologies may well be exaggerated.<sup>77</sup> According to one study conducted in 2016, only about 50 percent of judicial documents had been published online and the percentages of published judicial documents seemed to differ among regions.<sup>78</sup> Basing the similar case recommendation systems, among other smart court functions, on incomplete datasets will vitiate the accuracy of smart courts.<sup>79</sup> Whether due to technical or data limitations, jurists who have tried the case recommendation systems complain that the results are coarse and not sufficiently attuned to their needs.<sup>80</sup> Shanghai's 206 System also failed to impress

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available at <http://www.court.gov.cn/zixun-xiangqing-5867.html>.

<sup>77</sup> Lin, Wang & Teng, *supra* note 62.

<sup>78</sup> To confront the "missingness" problem and the regional inconsistencies in judicial transparency, the SPC revised its provisions in 2016, which specify the types of documents that should be disclosed and require the courts to provide the case number, deciding court, decision date, and non-disclosure reasons when a judicial document is determined not to be published on the Internet. See *Zuigao Renmin Fayuan Guanyu Renmin Fayuan zai Hulianwang Gongbu Caipan Wenshu de Guiding* (最高人民法院关于人民法院在互联网公布裁判文书的规定) [Provisions of the Supreme People's Court on the Issuance of Judgments on the Internet by the People's Courts] (promulgated by the Sup. People's Ct., Aug 29, 2016, effective Oct 1, 2016) Arts. 3 & 6, ZUIGAO RENMIN FAYUAN (最高人民法院) [SUP. PEOPLE'S CT.], Aug 31, 2016, available at <http://www.court.gov.cn/zixun-xiangqing-25321.html>; see also Ma Chao (马超), Yu Xiaohong (于晓虹) & He Haibo (何海波), *Da Shuju Fenxi: Zhongguo Sifa Caipan Wenshu Shangwang Gongkai Baogao* (大数据分析: 中国司法裁判文书上网公开报告) [Big Data Analysis: Report on Online Publications of Chinese Judicial Decision Documents], ZHONGGUO FALU PINGLUN (中国法律评论) [CHINA L. REV.] 195 (2016), available at <https://www.pkulaw.com/qikan/43ce21ce8e6cb9d5330b9fa907ddf96abdfb.html>; see also Benjamin L. Liebman, Margaret Roberts, Rachel E. Stern & Alice Wang, *Mass Digitization of Chinese Court Decision: How to Use Text as Data in the Field of Chinese Law*, 21ST CENTURY CHINA CENTER RESEARCH PAPER NO. 2017-01, COLUMBIA PUBLIC LAW RESEARCH PAPER NO. 14-551 (Oct 1, 2019), available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2985861](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2985861).

<sup>79</sup> Xu Jun (徐骏), *Zhihui Fayuan de Fali Shensi* (智慧法院的法理审思) [The Jurisprudential Contemplation of Smart Courts], 3 FAXUE (法学) [LAW SCIENCE] 55, 58 (2017).

<sup>80</sup> Meng Yu & Guodong Du, *supra* note 72; see also Liu Wenjing (刘雯静),

many of the judges who tested it.<sup>81</sup> Difficulty in formulating criteria for ascertaining the importance of a given piece of data also means that “it is entirely possible for a unique element having a determinative impact on the [outcome of a] case to be filtered out by the [Shanghai 206] System during the data selection process.”<sup>82</sup> A report by the Institute of Law of the Chinese Academy of Social Sciences noted that the various platforms offered by different courts do not communicate amongst each other and are ill-coordinated.<sup>83</sup> Finally, “[m]any of the self-styled ‘artificial intelligence’ products available currently are essentially still supported by traditional customer service technology, like basic templates for forms.”<sup>84</sup>

Despite these deficiencies and challenges, however, the political impetus behind legal technology remains strong. The digitization and automation of Chinese adjudication can be viewed as part of a broader trend that has seen technology seep into every aspect of public and private life. WeChat, one of the most popular applications in China, counts over a billion monthly active users who rely on it to send messages, pay their utility bills, make payments in shops and restaurants, book tickets for their travel, and find accommodation. In some parts of China, citizens are being assigned social credit scores that measure their civic virtue and social trustworthiness.<sup>85</sup> Public

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*Leian Zhineng Tuisong Xitong Gaijin Jianyi Jiyu Faguan Yonghu Tiyan ji Leian Jiansuo Xitong de Bidui Yanjiu* (类案智能推送系统改进建议——基于法官用户体验及类案检索系统的比对研究) [Suggestions for Improving the Intelligent Similar Cases Recommendation Systems – A Comparative Study Based on Judges’ User Experience and Similar Cases Researching System], MAANSHANSHI ZHONGJI RENMIN FAYUAN (马鞍山市中级人民法院) [INTERMEDIATE PEOPLE’S COURT OF MAANSHAN] (Dec. 23, 2019, 8:21 AM),

<http://maszy.chinacourt.gov.cn/article/detail/2019/12/id/4739358.shtml>.

<sup>81</sup> Zhang Fuli (张富利) & Zheng Haishan (郑海山), *Dashuju Shidai Rengong Zhineng Fuzhu Liangxing de Dingwei Qianjing ji Fengxian Fangkong* (大数据时代人工智能辅助量刑的定位、前景及风险防控) [Navigation, Prospects, and Risk Control of Sentencing Assistance by Artificial Intelligence in the Big Data Age], SOC. SCI. IN GUANGXI 92, 96 (2019).

<sup>82</sup> *Id.* at 99.

<sup>83</sup> Jason Tashea, *China’s All-virtual Speciality Internet Courts Look Set to Expand into Other Areas of the Law*, ABA JOURNAL, Nov. 1, 2019, <https://www.abajournal.com/magazine/article/china-all-virtual-specialty-internet-courts>.

<sup>84</sup> Lin, Wang & Teng, *supra* note 62.

<sup>85</sup> Shehui Xinyong Tixi Jianshe Guihua Gangyao (2014 – 2020 Nian) (社会信用体系建设规划纲要 (2014–2020 年)) [Guidelines for the Development of the Social Credit System (2014–2020)] (promulgated by the St. Council, June 14, 2014, effective June 27, 2014) (China),

behavior, captured and analyzed by facial recognition systems, impact these scores. But the use of technology to ease the financial and administrative burdens of litigation, to make judicial documents transparent and accessible to laypeople, and to assist judges in rendering faster and fairer decisions also responds to the profound tensions in the Chinese legal system.

#### *A. Legality and Professionalization of the Judiciary*

First, the emphasis on legality is pressuring a judicial system that is still undergoing reform. Despite caricatures of Chinese society as lawless and Chinese law as an oxymoron, operating through legal forms and institutions has become ever more essential to governing China. China's territory is vast and its population is diverse and sprawling. A system for regularizing and disciplining private and official behavior is necessary for decisions made in Beijing to be implemented nationally.<sup>86</sup> This challenge—exercising political authority over such an expanse from the halls of power in the capital—has existed since imperial times, making a legal system instrumental to the idea of a centralized state. But while some realities have not changed, others have evolved. For Chinese leaders today, “empowering legal institutions . . . has been a major source of both personal status for Xi and popular political legitimacy for the Party.”<sup>87</sup> Adherence to legal rules and norms appears to satisfy a nascent public demand for legality. This “turn towards law”<sup>88</sup> has contributed to an explosion in the number of cases filed in the courts. Recent statutory reforms encourage legal rather than political resolution of disputes. Claims that might have previously been abandoned or pressed through other avenues are now being funneled into the courts. At the same time, the party-state strives to “make the public feel the fairness and justice in each and every case”<sup>89</sup> by raising the standard of adjudication and thereby enhancing popular trust in courts. The pool of judges has shrunk as qualification and selection have become more stringent. At the abstract level, the embrace of

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[http://www.gov.cn/zhengce/content/2014-06/27/content\\_8913.htm](http://www.gov.cn/zhengce/content/2014-06/27/content_8913.htm).

<sup>86</sup> Taisu Zhang & Tom Ginsburg, *China's Turn Toward Law*, 59 VA. J. INT'L L. 278, 284 (2019).

<sup>87</sup> *Id.* at 285.

<sup>88</sup> *Id.* at 284.

<sup>89</sup> Cao Desheng, *Xi Emphasizes Crucial Role of Fairness, Justice in Law Enforcement*, CHINA DAILY (May 10, 2019, 9:49AM), <http://www.chinadaily.com.cn/a/201905/10/WS5cd4d8aba3104842260baecc.html>.



legality, on the one hand, and the professionalization of the judiciary, on the other, are not contradictory goals. But in the Chinese context, they combine to lay great strain on a legal system that is struggling with burgeoning caseloads amidst a reduction in the size of the judicial corps.

Remarkably, legally qualified judges are still a relatively new development in China. During the first three decades of the People's Republic, law and courts were characterized as the "knife handle" of the state, to be wielded against class enemies.<sup>90</sup> Judges wore uniforms, "fulfill[ing] the same functions as the police and the armies."<sup>91</sup> Indeed, many judges were recruited from the People's Liberation Army and despite having no background or training in law, military veterans and officials transferred from other governmental bodies comprised the majority of Chinese judges until the late 1990s.<sup>92</sup> Of the more than 250,000 judges serving in 1998, only 5.6% had an undergraduate degree.<sup>93</sup> Chinese legal scholars deplored this state of affairs. Ma Junju and Nie Dezong from Tsinghua University and Wuhan University law schools bemoaned the lack of any standards.<sup>94</sup> "In China, drivers can become judges, military cadres could become judges, workers can become judges; a person who never worked in political-legal organs, handled any cases, or studied law can be appointed as the president of a court."<sup>95</sup> He Weifang from Peking University Law School held that judges, being responsible for the lives of people as much as physicians are, should receive specialized training in their craft.<sup>96</sup> These criticisms gained traction. The SPC imposed education and qualification requirements for judges appointed

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<sup>90</sup> Cai Dingjian, *Development of the Chinese Legal System since 1979 and its Current Crisis and Transformation*, 11 CULTURAL DYNAMICS 135, 138 (1999).

<sup>91</sup> Zhang Qianfan, *The People's Court in Transition: The Prospects of the Chinese Judicial Reform*, 12 J. CONTEMP. CHINA 76, 77 (2003).

<sup>92</sup> Liu Sida, *Beyond the Global Convergence: Conflicts of Legitimacy in a Chinese Lower Court*, 31 LAW & SOC. INQUIRY 75, 82–83 (2006).

<sup>93</sup> Ma Junju (马骏驹) and Nie Dezong (聂德宗), *Dangqian Woguo Sifa Zhidu Cunzai de Wenti yu Gaijin Duice* (当前我国司法制度存在的问题与改进对策) [Existing Problems of the Contemporary Chinese Legal System and Strategies for Improvements], 6 FAXUE PINGLUN (法学评论) [JOURNAL OF LEGAL COMMENTARY] (1998).

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> He Weifang (贺卫方), *Fuzhuan Junren Jin Fayuan* (复转军人进法院) [Military Veterans Work in Courts], NANFANG ZHOUMO (南方周末) [SOUTHERN WEEKLY] (Jan. 2, 1998), <http://www.rucfcc.com/article/?id=602>.



after January 1, 2002.<sup>97</sup> In addition, serving judges had to pass internal examinations to continue in their positions. The quality and efficiency of adjudication, judicial capacity, and public trust in courts were enumerated as the main thrusts of the SPC's fourth five-year reform plan covering 2014 to 2018.<sup>98</sup> To improve the judiciary and "retain talent at the adjudication frontlines," in July 2014, the SPC introduced a quota judge system limiting the proportion of court personnel authorized to hear disputes to 39 percent.<sup>99</sup> Staff in courts were reshuffled into three categories: judges, judicial assistants, and administrative staff.<sup>100</sup> Judges who did not pass internal evaluations were transferred to judicial assistance or administrative roles and were no longer permitted to decide cases.<sup>101</sup> According to statistics reported to the National People's Congress's Standing

<sup>97</sup> *Guanyu Guojia Sifa Kaoshi Shishi Banfa* (关于国家司法考试实施办法) [Measures for the Implementation of State Judicial Examination (for Trial Implementation)] (promulgated by the Supreme People's Court, Oct. 31, 2001, effective Jan. 1, 2002), Pkulaw (China), available at [http://pkulaw.cn/fulltext\\_form.aspx?db=chl&gid=37758](http://pkulaw.cn/fulltext_form.aspx?db=chl&gid=37758).

<sup>98</sup> *Zuigao Renmin Fayuan Guanyu Quanmian Shenhua Renmin Fayuan Gaige de Yijian* (最高人民法院关于全面深化人民法院改革的意见) [Opinions of the Supreme People's Court concerning Comprehensively Deepening People's Court Reform] (promulgated by SPC, Feb. 26, 2015, effective Feb. 26, 2015) SUP. PEOPLE'S CT. GAZ., July 10, 2015, 7 (China), available at <http://www.court.gov.cn/zixun-xiangqing-13520.html>.

<sup>99</sup> *Zuigao Renmin Fayuan Fabu "Siwu Gaige Gangyao"* (最高人民法院发布“四五改革纲要”) [The SPC Issued "Siwu Reform Guidelines"], RENMIN FAYUAN BAO (人民法院报) [PEOPLE'S COURTS DAILY] (July 10, 2014, 4:08 PM), <http://www.court.gov.cn/zixun-xiangqing-8168.html>; see also Lin Feng, *The Future of Judicial Independence in China*, ASIA-PACIFIC JUDICIARIES 81, 87 (H. P. Lee & Marilyn Pittard eds., 2017).

<sup>100</sup> *Zuigao Renmin Fayuan Fabu "Siwu Gaige Gangyao"* (最高人民法院发布“四五改革纲要”) [The SPC Issued "Siwu Reform Guidelines"], *supra* note 99; *Faguan Yuanezhi Luodi dui Sifa Neibu Guanli Jizhi Jianshe Yiyi Zhongda* (法官员额制落地对司法内部管理机制建设意义重大) [Quota Judge System Has a Significant Impact on the Internal Management System of the Judiciary], RENMIN FAYUAN BAO (人民法院报) [PEOPLE'S COURTS DAILY] (July 8, 2017, 2:18 PM), <https://www.chinacourt.org/article/detail/2017/07/id/2916592.shtml>.

<sup>101</sup> Gao Jinghong (高憬宏), *Faguan Yuanezhi de Zhidu Jiazhi he Shixian Tujing* (法官员额制的制度价值和实现路径) [The Value and Fulfilment of the Quota Judge System], TIANJIN FAYUAN WANG (天津法院网) [TIANJIN COURTS] (July 20, 2015, 3:39 PM), <http://tjfy.chinacourt.gov.cn/article/detail/2015/07/id/1936313.shtml>; see also Susan Finder, *Why are Chinese Judges So Stressed?*, SUPREME PEOPLE'S COURT MONITOR, Feb. 27, 2018, <https://supremepeoplescourtmonitor.com/2018/02/27/why-are-chinese-judges-so-stressed/>.

Committee's in November 2017, the total number of judges nationwide dropped by 46 percent, from 211,990 to 120,138 after implementation of the quota judge system.<sup>102</sup>

As adjudicatory resources tightened, the amount of litigation multiplied. Between 2005 to 2017, the number of cases accepted by courts across the country rose dramatically from 7,984,920 to 22,601,567.<sup>103</sup> This explosion in number of cases has been attributed to China's economic growth, increased public awareness of law and rights, and state policies promoting the rule of law.<sup>104</sup> Chinese courts adjusted by "[keeping] an array of eligible cases out of the judicial system so that the court docket remains manageable and the judicial resources are directed to where they are needed the most."<sup>105</sup> "To sufficiently safeguard the parties' litigation rights and effectively solve the common people's 'difficulty in case filing,'" the SPC in 2015 instituted a case filing regime, mandating courts to docket all properly lodged complaints and explain any refusal.<sup>106</sup> In addition, courts are to notify parties of necessary additions or revisions altogether.<sup>107</sup> These strictures rein in the discretion of case filing divisions, which in the past had either ignored complaints without hearing from the plaintiffs<sup>108</sup> or temporized by making successive demands for supplementary materials.<sup>109</sup>

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<sup>102</sup> Zhou Qiang (周强), *Guanyu Renmin Fayuan Quanmian Shenhua Sifa Gaige Qingkuang de Baogao* (关于人民法院全面深化司法改革情况的报告) [The SPC Report concerning the Comprehensive Strengthening Judicial Reform in People's Courts], THE NATIONAL PEOPLE'S CONGRESS, Nov. 1, 2017, <http://www.court.gov.cn/zixun-xiangqing-66802.html>.

<sup>103</sup> Law Yearbook of China (2006–2018).

<sup>104</sup> Zuo Weimin (左卫民), *Susong Baozha de Zhongguo Yingdui: Jiyu Wqu Fayuan Jin Sanshinian Shenpan Shijian de Shizheng Fenxi* ("诉讼爆炸"的中国应对: 基于 W 区法院近三十年审判实践的实证分析) [China's Response to "Litigation Explosion": The Empirical Analysis of the W District Court's Adjudication Practices over the Past 30 Years], 4 ZHONGGUO FAXUE (中国法学) [CHINA LEGAL SCI.] 238 (2018).

<sup>105</sup> Nanping Liu & Michelle Liu, *Justice without Judges: The Case Filing Division in the People's Republic of China*, 17 U.C. DAVIS J. INT'L L. & POL'Y 283, 330 (2011).

<sup>106</sup> *Guanyu Renmin Fayuan Tuixing Lian Dengjizhi Gaige de Yijian* (关于人民法院推行立案登记制改革的意见) [Opinions concerning the Promotion of the Case Filing Registration System Reform] (promulgated by the Supreme People's Court, Apr. 15, 2015, effective May 1, 2015) SUP. PEOPLE'S CT. GAZ., Sept. 10, 2015, 12 (China), available at <http://www.court.gov.cn/zixun-xiangqing-14152.html>.

<sup>107</sup> *Id.*

<sup>108</sup> Liu & Liu, *supra* note 105, at 88.

<sup>109</sup> Susan Finder, *New Docketing Procedures Come to Chinese Courts*, SUPREME PEOPLE'S COURT MONITOR, June 18, 2015,

Whereas the courthouse doors are being opened to more people than ever, political channels, such as *xinfang*, for raising grievances are being constricted. Dating back to the early 1950s,<sup>110</sup> *xinfang* is based on political, rather than judicial, authority. *Xinfang* offices receive complaints, suggestions, and requests from the general population through letters (“xin”) or in-person visits (“fang”).<sup>111</sup> Millions of petitions are lodged in *xinfang* offices at the national and local levels every year.<sup>112</sup> Before the “*xinfang* village” in Beijing was torn down for railway construction in 2008, over 10,000 petitioners had amassed and had been living there in their quest for justice.<sup>113</sup> The popularity of *xinfang* has been attributed to its broad jurisdiction and diverse remedies, as *xinfang* is administered by powerful government agencies rather than toothless courts.<sup>114</sup> Another possible explanation is a strong cultural tendency for citizens to go to government officials to arbitrate their disputes.<sup>115</sup> In imperial China, local magistrates were known as “parent officials” and discharged both executive and judicial functions. They were expected to care for the people under their charge who, in turn, owed them obedience. Discontented subjects could appeal to higher political authorities, some even making the long journey to the capital in search of justice. This dynastic practice

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<https://supremepeoplescourtmonitor.com/2015/06/18/new-docketing-procedures-come-to-the-chinese-courts/>.

<sup>110</sup> *Complaint Bureau Busiest Office in Beijing*, CHINA DAILY, Sep. 2, 2007, [https://www.chinadaily.com.cn/china/2007-09/02/content\\_6142475.htm](https://www.chinadaily.com.cn/china/2007-09/02/content_6142475.htm).

<sup>111</sup> *Id.*; see also *Xinfang Tiaoli* (2005) (信访条例 (2005)) [Letters and Visits Regulation (2005)] (promulgated by the State Council, May 1, 2005, effective Oct. 1, 2005), Art. 2 ST. COUNCIL GAZ., Mar. 20, 2005, 4 (China), available at [http://www.gov.cn/zwgk/2005-05/23/content\\_271.htm](http://www.gov.cn/zwgk/2005-05/23/content_271.htm).

<sup>112</sup> *Complaint Bureau Busiest Office in Beijing*, *supra* note 110; Li Fengjing (李逢静), *Guojia Xinfangju Fujuzhang: 1 zhi 10 Yuefen Quanguo Xinfang Zongliang wei 604 Wanjian* (信访局副局长: 1至10月份全国信访总量为604万件) [The Deputy Chief of State Letters and Visits Bureau: the Total Amount of Xinfang Petitions Nationwide was 6.04 million], BEIJING CHENBAO (北京晨报) [BEIJING MORNING POST], Nov. 29, 2013, [http://news.cnr.cn/native/gd/201311/t20131129\\_514265790.shtml](http://news.cnr.cn/native/gd/201311/t20131129_514265790.shtml) (For example, from January to October in 2013, *xinfang* offices at the national and local levels received over six million petitions).

<sup>113</sup> *Beijing's 'Petition Village' Demolished*, DEUTSCHE WELLE, Sept. 19, 2007, <https://www.dw.com/en/beijings-petition-village-demolished/a-5213977>.

<sup>114</sup> *Id.*

<sup>115</sup> Zhao Yansen (赵焱森), *Xinfang Jubaoliang de Bianhua yu Sikao* (信访举报量的变化与思考) [The Change and Analysis of the Total Amount of Xinfang Petitions], 4 ZHONGGUO JIANCHA (中国监察) [SUPERVISION IN CHINA] 47 (2000).

found a contemporary parallel when the former Premier Wen Jiabao met with eight petitioners who had journeyed to the National *Xinfang* Bureau in Beijing.<sup>116</sup> After recounting to the former Premier how his home in Hubei province had been illegally demolished, Wang Aiguo, one of the petitioners, was confident his travails were at an end.<sup>117</sup> Speaking to a reporter, Wang confessed that he never expected to be heard by so high an official. Premier Wen, he said, was “close to the people and dedicated to practical solutions.”<sup>118</sup>

Whether the motivation is to sate a public demand for legality or to avoid the disturbances precipitated by a case-by-case approach to handling grievances,<sup>119</sup> the central government eventually clamped down on the perceived excess of *xinfang*. In 2014, to curb the phenomenon of citizens “trusting high-level rather than low-level administrators and trusting *xinfang* rather than law,”<sup>120</sup> the National *Xinfang* Bureau announced a policy of ‘level-by-level visits (*zhuji zoufang*). To temper incessant petitioning, grievants may only ask for an unsatisfactory *xinfang* decision to be reviewed twice.<sup>121</sup> Petitioners were also prohibited from bypassing local authorities and appealing directly to superior governments.<sup>122</sup> The deputy head of the

<sup>116</sup> *Wen Jiabao yu Laijing Shangfang Qunzhong Mianduimian Jiaoliu Xi Shishang Shouci* (温家宝与来京上访群众面对面交流 系史上首次) [Wen Jiabao Communicated Face-to-face with the Public Who Came to Beijing to File Petitions for the First Time in History], ZHONGGUO ZHENGFU WANG (中国政府网) [CHINESE GOVERNMENT WEBSITE] (Jan. 25, 2011, 7:08 PM), <https://news.qq.com/a/20110125/001391.htm>.

<sup>117</sup> *Shangfangzhe Jiangshu Xijie: Wenjiabao Dangchang Zhiding Xinfang Juzhang Duban* (上访者讲述细节：温家宝当场指定信访局长督办) [Petitioner Describing Details: Wen Jiabao Assigned the Chief of State Letters and Visits Bureau on Site to Supervise and Handle], ZHENGZHOU WANBAO (郑州晚报) [ZHENGZHOU NIGHT POST], Jan. 28, 2011, <https://xian.qq.com/a/20110128/000149.htm>.

<sup>118</sup> *Id.*

<sup>119</sup> See Lianjiang Li, Mingxing Liu, & Kevin J. O’Brien, *Petitioning Beijing: The High Tide of 2003–2006*, 210 THE CHINA QUARTERLY 313 (2012).

<sup>120</sup> Wang Haokui (王昊魁), *Zhuji Zoufang Geng Youxiao Jiedu Xinfang Xingui* (逐级走访更有效——解读信访新规) [Level-by-Level Visits are More Effective: Understanding the New Letters and Visits Regulation], GUANGMING RIBAO (光明日报) [GUANGMING DAILY], Aug. 26, 2015, [http://xfj.jl.gov.cn/xfgj/ztzl/jht/hyb/201508/t20150826\\_2065599.html](http://xfj.jl.gov.cn/xfgj/ztzl/jht/hyb/201508/t20150826_2065599.html).

<sup>121</sup> *Xinfang Tiaoli* (2005) (信访条例 (2005)) [Regulation on Complaint Letters and Visits (2005)] (promulgated by the State Council, May 1, 2005, effective Oct. 1, 2005), Arts. 34, 35.

<sup>122</sup> *Guojia Xinfangju Yinfa Guanyu Jinyibu Guifan Xinfang Shixiang Shouli Banli Chengxu Yindao Laifangren Yifa Zhuji Zoufang de Banfa* (国家信访局印发关于进一步规范信访事项受理办理程序引导来访人依法逐级走

National *Xinfang* Bureau, Zhang Enxi, elaborated that these policies were designed to “resolve problems legally, timely, and locally.”<sup>123</sup> Constraints on the use of letters and visits achieved the desired consequence of diverting more cases into judicial fora. Between greater access to the legal system and the fewer venues for *xinfang*, in 2016 alone, courts at all levels accepted 16,302,994 complaints, a 12.48 percent increase year-on-year.<sup>124</sup>

The explosion in litigation, on the one hand, and the thinning of the judicial ranks, on the other, has resulted in a situation of “too many cases and too few judges (*anduo renshao*).”<sup>125</sup> From January to March 2019, 7.6 million new cases were distributed among 125,000 quota judges; an average of 61 cases per judge over the period.<sup>126</sup> Cases still pending after the legally prescribed deadline, reversals on appeals, and wrongful judgments are apt to shake public confidence in the judicial system.<sup>127</sup> The stress felt by judicial officers has also become a matter of general concern. Death, illness, and resignations of overtired judges were documented by media in recent years. For example, “in Miluo, a city in Hunan Province, central China, four judges died of illness in 2016 and 2017, and

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访的办法) [The Measure Issued by the National Xinfang Bureau on Further Regulating the Acceptance and Handling Procedures for Xinfang Matters in order to Guide Petitioners to Visit Level by Level] (promulgated by the National Xinfang Bureau, Apr. 24, 2014, effective Apr. 24, 2014).

<sup>123</sup> *Jiedu Guojia Xinfangju Guanyu Jinyibu Guifan Xinfang Shixiang Shouli Banli Chengxu Yindao Laifangren Yifa Zuji Zoufang de Banfa* (解读国家信访局关于进一步规范信访事项手里办理程序引导来访人依法逐级走访的办法) [Interpreting the Measures of the National *Xinfang* Bureau on Further Regulating the Acceptance and Handling Procedures for Xinfang Matters in order to Guide Petitioners to Visit Level by Level], HUNAN XINFANG, July 22, 2015, <https://xfj.hunan.gov.cn/News/1002.html>.

<sup>124</sup> *China Issues White Paper on Judicial Reform of Chinese Courts*, CHINA DAILY, Feb. 27, 2017, Section IV, Judicial Power Serving the People.

<sup>125</sup> Zuo, *supra* note 104.

<sup>126</sup> Li Huisi, *Zuigaofa: 2019nian Diyi Jidu Quanguo Fayuan Jieanshu Tongbi Dafu Zengjia* (最高法: 2019年第一季度全国法院结案数同比大幅增加) [Supreme People’s Court: the Closing Number of Cases of Courts Nationwide during the First Quarter of 2019 Increased by a Large Margin], ZHONGGUO XINWEN WANG, May 15, 2019, <http://news.cctv.com/2019/05/15/ARTIccjmIFrjIU40NhMyAGMN190515.shtml>.

<sup>127</sup> Chen Shaobin, *Sifa Gongxinli Tanta* (司法公信力探讨) [Analysis of Public Trust in Courts], <http://www.docin.com/p-2060013146.html>; see also *Qiantan Woguo Sifa Gongxinli Xianzhuang ji Tisheng Cuoshi* (浅谈我国司法公信力现状及提升措施) [A Preliminary Review of the Current Circumstances of China’s Public Trust in the Judiciary and Strategies for Improvement] (Yuanan County People’s Court, Sep. 17, 2015).

84.5% of judges were found to be in “sub-health status.”<sup>128</sup> In 2017, five quota judges from Sichuan Province passed away; 34 resigned on medical grounds.<sup>129</sup> Citing the death of 85 judges between 2013 and 2018, Zhou Qiang called for public attention to the welfare of judges.<sup>130</sup>

Technology is one antidote to the conundrum of “too many cases and too few judges.” For example, to conserve judicial time and resources, Wechat portals enable real-time communication and document transmission between litigants, lawyers, and judges. Powered by artificial intelligence, innovations like the 206 System and Xiaozhi accelerate proceedings by analyzing case filings, summarizing points of trial contention, transcribing hearings, calculating damages, finding related cases, and generating depositions. Besides boosting judicial efficiency, technology also shapes citizens’ perceptions of and attitudes towards the justice system. Courts have touted positive feedback on their litigation services.<sup>131</sup> A lawyer from Guangxi Province was quoted lauding the convenience of electronic filing:

*I used to go to courts to file complaints. There were traffic jams and no spots available for parking. I also had to wait in line when I arrived in the case filing hall. If any material was missing, I had to make another trip. [It] costed time and energy. Now I only need around 10 minutes to submit documents to file a complaint*

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<sup>128</sup> Guodong Du & Meng Yu, *Chinese Courts Facing Litigation Explosion*, CHINA JUSTICE OBSERVER, 19 Feb. 2019, <https://www.chinajusticeobserver.com/a/chinese-courts-facing-litigation-explosion>.

<sup>129</sup> Liu Ziyang, *5nian 85ming Faguan Jilao Chengji huo Zaoshou Baoli Shanghai Yingong Xisheng* (5 年 85 名法官积劳成疾或遭受暴力伤害因公牺牲) [85 Judges Got Sick Due to Overwork or were Died from Physical Attack for Work Reasons], LEGAL DAILY, Apr. 12, 2018, [http://www.legaldaily.com.cn/index\\_article/content/2018-04/12/content\\_7520193.htm?node=5955](http://www.legaldaily.com.cn/index_article/content/2018-04/12/content_7520193.htm?node=5955).

<sup>130</sup> *Id.*

<sup>131</sup> Wang Zheng, *Susong Fuwu you Wendu Qunzhong Manyi lv 95%* (诉讼服务有温度群众满意率 95%) [Litigation Services Have Temperature; The Public Satisfaction Reaches 95%], ZHONGGUO RIBAO WANG, Jan. 14, 2019, <https://baijiahao.baidu.com/s?id=1622600247710026708&wfr=spider&for=pc>; see also Wu Shunlin, *Sifa Fuwu Manyidu Bang Gongbu* (司法服务满意度榜公布) [The Satisfaction Rate of Judicial Services is Published], NANFANG DUSHI BAO, July 2, 2019, [https://www.sohu.com/a/324221500\\_161795](https://www.sohu.com/a/324221500_161795).

*online. The procedure for case filing has been simplified significantly.*<sup>132</sup>

The affective dimension of human-computer interaction should also not be neglected. Commenting on his first encounter with the robot Xiao Yu at a local court in Hebei province, a litigant said: “This is my first time filing a complaint [in court]. I saw a robot when I arrived. I tried to talk to her and, according to her instructions, I successfully completed the filling.”<sup>133</sup> “Xiao Yu is so adorable,” he added. “Hearing her voice calmed me down immediately.”<sup>134</sup> For citizens who have no occasion to resort to the courts, publication of judgments on the internet could strengthen faith in legal institutions by rendering their decisions visible and thus examinable. Online transparency—even if ultimately little more than a façade—might substitute for judicial competence and probity in cultivating public trust in the justice system.

#### *B. Social Harmony and the Rule of Law*

On December 13, 1978, in the wake of the Cultural Revolution that had upended Chinese law and society, soon-to-be paramount leader Deng Xiaoping sought to restore order to chaos by governing through rules.<sup>135</sup> Pithily encapsulating his thoughts in sixteen Chinese characters, he declared that

*There should be laws to rely on, laws must be followed, the enforcement of laws must be strict, and violation of laws must be punished. (“you fa*

<sup>132</sup> Fei Wenbin, Chen Taiting, Zeng Zhen, Huang Sishi, & Wei Hualing, *Tamen Zheyang Dazhao Yidong Banan Zhihui Fayuan* (他们这样打造移动办案智慧法院) [They Established a Smart Court with a function of Mobilized Case Handling in This Way], GUANGXI HIGH PEOPLE’S COURT, June 15, 2017, [https://www.sohu.com/a/149175908\\_211448](https://www.sohu.com/a/149175908_211448).

<sup>133</sup> Jujiao Zhihui Fayuan Daosu Jiqiren Yunfan Zoujin Qiaodong Renmin Fayuan (聚焦智慧法院 导诉机器人“云帆”走进桥东人民法院) [Spotlight on Smart Courts: Litigation Guide Robot Yun Fan Walked into Qiaodong People’s Court], ZHONGGUO SHANGYE GUANCHANG WANG [China Finance Observer], July 4, 2018, [http://www.cnelc.com/text/79/180704/AD100830523\\_1.html](http://www.cnelc.com/text/79/180704/AD100830523_1.html).

<sup>134</sup> *Id.*

<sup>135</sup> STANLEY B LUBMAN, *BIRD IN CAGE: LEGAL REFORM IN CHINA AFTER MAO*, 130 (1999); see also Carlos W H Lo, *Deng Xiaoping’s Ideas on Law: China on the Threshold of a Legal Order*, 32 *ASIAN SURV.* 649, 649–501 (1992).

*ke yi, you fa bi yi, zhi fa bi yan, wei fa bi jiu*”)<sup>136</sup>

In the years that followed, over a hundred statutes were drafted and promulgated by the National People’s Congress and its Standing Committee. The Criminal Law was passed in 1979, taking effect in 1980. “Build[ing] a socialist country under the rule of law” was written into Article 5 of the PRC Constitution in 1982.<sup>137</sup> In 1986, the General Principles of the Civil Law were codified.<sup>138</sup> Law schools, suppressed during the upheaval of the late 60s and early 70s, reemerged<sup>139</sup> and lawyers, once state workers, became members of a licensed profession rendering services to paying clients.<sup>140</sup> By 2000, there were more than 68,000 licensed lawyers in China—a dramatic increase from the

<sup>136</sup> Deng Xiaoping, *Jiefang Sixiang, Shishi Qiushi, Tuanjie Yizhi Xiangqiankan* (解放思想, 实事求是, 团结一致向前看) [Emancipate the Mind, Seek Truth from Facts, and Unit as One in Looking to the Future], Dec. 13, 1978, <http://epaper.bingtuannet.com/pad/cont/201808/16/c37410.html>.

<sup>137</sup> *Zhonghua Renmin Gongheguo Xianfa* (中华人民共和国宪法) [The Constitution of the People’s Republic of China] (1982 Amendment) (promulgated by the National People’s Congress, Dec. 4, 1982, effective Dec. 4, 1982).

<sup>138</sup> *See Zhonghua Remin Gongheguo Xingfa* (1979 Nian) (中华人民共和国刑法) [Criminal Law of the People’s Republic of China (1979)] (promulgated by the National People’s Congress, July 1, 1979, effective Jan. 1, 1980); *see also Zhonghua Remin Gongheguo Minfa Tongze* (中华人民共和国民法通则) [General Principles of the Civil Law of the People’s Republic of China] (promulgated by the National People’s Congress, Apr. 12, 1986, effective Jan. 1, 1987).

<sup>139</sup> Carl Minzner, *The Rise and Fall of Chinese Legal Education*, 36 *FORDHAM INT’L L.J.* 333, 335 (2013); *see also* HASSANE CISSE, SAM MULLER, CHANTAL THOMAS & WANG CHENGUANG, *THE WORLD BANK LEGAL REV., VOLUME 4: LEGAL INNOVATION AND EMPOWERMENT FOR DEVELOPMENT* (2013) (“overall, the number of graduates from law schools or legal institutions in China increased from around 8,000 in 1996 to more than 135,000 in 2010. There are more than 640 ‘real’ law schools around the country, and the legal education market is booming.”).

<sup>140</sup> *Zhonghua Renmin Gongheguo Lvshi Zanxing Tiaoli* (中华人民共和国律师暂行条例) [Interim Regulation of the People’s Republic of China on Lawyers] (promulgated by the Standing Committee of the National People’s Congress, Aug. 26, 1980, effective Jan. 1, 1982), Art. 1 (which states “lawyers are state legal workers whose tasks are to provide state organs, enterprises, social organizations, people’s communes, and citizens with legal assistance”); *Zhonghua Renmin Gongheguo Lvshi Fa* (中华人民共和国律师法) [Law of the People’s Republic of China on Lawyers] (promulgated by the Standing Committee of the National People’s Congress, Sep. 1, 2017, effective Jan. 1, 2018), Art. 2 (which states “[a] lawyer...means a professional who has acquired a lawyer’s practice certificate in accordance with law, and is authorized or designated to provide the parties with legal services.”).



212 counted in 1979.<sup>141</sup> As part of the revival of law and legal institutions, citizens were encouraged to learn their rights and to vindicate them. Harkening back to the legal popularization campaigns of the 50s, study groups were organized to digest and debate the 1982 Constitution and public trials served both deterrent and didactic purposes. But the government also turned to new media to bring law to the masses. Films educated and entertained while legal knowledge contests allowed ordinary citizens to showcase their achievements in learning.<sup>142</sup>

Ruling through law restored the party-state's authority and legitimacy in the decades following the Cultural Revolution. It also returned the lives of the citizenry to a state of normalcy. But enthusiasm for legal reform waned in the decade between 2003 and 2013. A rise in mass discontent incited, perhaps, by blinkered attention to individual entitlements, the national leadership articulated a vision of a harmonious society. The millions of petitions every year attacking judicial decisions illustrated the dangers of rigidly adhering to legal procedures and norms.<sup>143</sup> A more flexible, relationship-oriented, approach was called for: stability was to be privileged over legality and

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<sup>141</sup> Zhang Yu, *Cong 0 Ren dao 36.5 Wanren, Lvshiye Sishinian Fashengle Shenme* (从 0 人到 36.5 万人, 律师业四十年发生了什么) [From 0 to 365 Thousand People, What Changes did It Happen in Legal Profession during the Past 40 Years?], DEMOCRACY AND LEGAL SYSTEM NET, Aug. 6, 2018, <http://kuaibao.qq.com/s/20180806A0E3T200?refer=spider>.

<sup>142</sup> JENNIFER ALTEHENDER, LEGAL LESSONS: POPULARIZING LAWS IN THE PEOPLE'S REPUBLIC OF CHINA, 1949–1989 234, 237–38 (2018).

<sup>143</sup> Chinese courts received over 9 million *xinfang* petitions in 2000 and 2001, exceeding the number of cases accepted by a large margin. Law Yearbook of China (2001–2002); In a survey fielded to 632 villagers who were filing *xinfang* petition in Beijing, 63.4 percent of respondents had sought resolution in courts. Yu Jianrong, *Zhongguo Xinfang Zhidu Gaige* (中国信访制度批判) [Reform of Xinfang system in China], 2 ZHONGGUO GAIGE 26, 27 [China Reform] (2005); Yu Jianrong, *Zhongguo de Saoluan Shijian yu Guanzhi Weiji: Zai Jiazhou Daxue Bokeli Fenxiao de Yanjiang* (中国的骚乱事件与管治危机: 在加州大学伯克利分校的演讲) [Riot Incidents and Control Crisis: Speech at UC Berkeley on October 30, 2007], SHEHUI XUEJIA CHAZUO [Teahouse for Sociologists] 26, 26 (2008) (“In fact, over the recent ten years, the number of collective action events happened in China rapidly surged. In 1993, there were 8708 events nationwide and the trend continues to accelerate afterwards. The number of events exceeded 32,000 in 1999, 60,000 in 2003, 74,000 in 2004, and 87,000 in 2005, which increased about ten times”); see also Michelson Ethan, *Climbing the Dispute Pagoda: Grievances and Appeals to the Official Justice System in Rural China*, 72 AM. SOC. REV. 459, 459–85 (2007); see also Lianjiang Li & Kevin O'Brien, *Villagers and Popular Resistance in Contemporary China*, 22 MODERN CHINA 28, 28–61 (1996).

mediation preferred to adjudication.<sup>144</sup> Described by one commentator as China's "turn against law,"<sup>145</sup> juridical institutions prevailed on litigants to eschew legal verdicts in favor of mutual compromise. Beginning in 2004, the SPC, in a series of guidance documents, advocated mediation as a means of promoting efficiency, securing voluntary compliance from parties and, more importantly, maintaining social harmony.<sup>146</sup> Lower courts were exhorted to devote special effort to mediating nine types of cases, including collective lawsuits that pose a threat to stability and social harmony, sensitive cases attracting public attention, and retrial or *xinfang* cases provoking strong emotions and intense conflicts.<sup>147</sup> The imperative to mediate

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<sup>144</sup> Li Xilian, *Fayuan Tiaojie Youxian de Lengsikao* (法院调解优先的冷思考) [Contemplation of Prioritizing Court Mediation], *FALV KEXUE* [Legal Science] 12, 12–14 (2010).

<sup>145</sup> Carl F. Minzner, *China's Turn Against Law*, 59 *AM. J. COMP. L.* 935 (2011).

<sup>146</sup> *Zuigao Renmin Fayuan Guanyu Renmin Fayuan Minshi Tiaojie Gongzuo Ruogan Wenti de Guiding* (最高人民法院关于人民法院民事调解工作若干问题的规定) [Provisions of the Supreme People's Court concerning Several Issues of the Civil Mediation Work of the People's Courts] (promulgated by the Supreme People's Court, Sep. 16, 2004, effective Nov. 1, 2004); *see also* *Zuigao Renmin Fayuan Guanyu Jinyibu Fahui Susong Tiaojie zai Goujian Shehuizhuyi Hexieshehui zhong Jiji Zuoyong de Ruogan Yijian* (最高人民法院关于进一步发挥诉讼调解在构建社会主义和谐社会中积极作用的若干意见) [Several Opinions of the Supreme People's Court on Further Displaying the Positive Roles of Court Mediation in the Building of a Socialist Harmonious Society] (promulgated by the SPC, Mar. 1, 2007, effective Mar. 1, 2007), Art. 2 ("Court mediation is ... an important component of harmonious adjudication. In recent years, people's courts ... established the principle of 'mediating when possible, judging when necessary, combining mediating with judgments, and solving the dispute once the case is concluded' as the guideline for civil trial work."); *see also* *Guanyu Jinyibu Guanche "Tiaojie Youxian Tiaopan Jiehe" Gongzuo Yuanze de Ruogan Yijian* (关于进一步贯彻“调解优先调判结合”工作原则的若干意见) [Several Opinions on Further Implementing the Work Principle of "Giving Priority to Mediation and Combining Mediation with Judgment"] (promulgated by the Supreme People's Court, June 28, 2010, effective June 28, 2010) ("Mediation is a judgment of high quality and high effectiveness, and mediation ability is a high level judicial ability. Mediation is conducive to the elimination of social conflicts and the realization of the resolution of all disputes upon close of a case, conducive to the restoration of the relations among the parties concerned and the realization of harmony.").

<sup>147</sup> *Guanyu Jinyibu Guanche "Tiaojie Youxian Tiaopan Jiehe" Gongzuo Yuanze de Ruogan Yijian* (关于进一步贯彻“调解优先调判结合”工作原则的若干意见) [Several Opinions on Further Implementing the Work Principle of "Giving Priority to Mediation and Combining Mediation with Judgment"] (promulgated by the Supreme People's Court, June 28, 2010, effective June 28, 2010), Art. 2 (4).

rather than adjudicate was rendered concrete through the SPC's Case Quality Assessment System. The mediation rate became—and remains—a key indicator for evaluating judges and ranking courts.<sup>148</sup>

While a reaction against the perceived excesses wrought by law, this shift also reprised the “Ma Xiwu” style of judging heralded in the early years of the People's Republic. Praised as a model for the ages, the eponymous judge “play[ed] multiple roles of the adjudicator, the mediator, the educator of the law, as well as the vanguard of harmony and stability within the local community.”<sup>149</sup>

*Ma Xiwu style stressed the primacy of the mass line over positive law, and the common wisdom of rural judicial cadres, who typically had little to no formal education. It required judicial cadres to adopt flexible and simplified procedures, and to venture forth from the courtroom to investigate personally the circumstances behind the cases before them. They were supposed to seek the opinions of the masses so that they might better understand pertinent facts and the potential ramifications of their rulings, grasp the conjunctions between law and local society, spread the teachings of Party*

<sup>148</sup> Zuigao Renmin Fayuan Guanyu Kaizhan Anjian Zhiliang Pinggu Gongzuo de Zhidao Yijian (Shixing) (最高人民法院关于开展案件质量评估工作的指导意见（试行）) [Guiding Opinion of the Supreme People's Court on Carrying out the Case Quality Evaluation (for Trial Implementation)] (promulgated by the Supreme People's Court, Jan. 11, 2008, effective Jan. 11, 2008); see also, Renmin Fayuan Anjian Zhiliang Pinggu Zhishu Bianzhi Banfa (Shixing) (人民法院案件质量评估值数编制办法（试行）) [Measures for the Indexing of Case Quality Evaluation of the People's Courts (for Trial Implementation)] (promulgated by the Supreme People's Court, June 15, 2013, effective July 1, 2013); see also Zhongguo Renmin Gongheguo Faguanfa (中华人民共和国法官法) [Judges Law of the People's Republic of China] (promulgated by the Standing Committee of the National People's Congress, Apr. 23, 2019, effective Oct. 1, 2019), Art. 45.

<sup>149</sup> PETER C.H. CHAN, MEDIATION IN CONTEMPORARY CHINESE CIVIL JUSTICE: A PROCEDURALIST DIACHRONIC PERSPECTIVE 46—47 (Brill Nijhoff 2017); see also Glenn Tiffert, *Socialist Rule of Law with Chinese Characteristics: A New Genealogy*, in SOCIALIST LAW IN SOCIALIST EAST ASIA 72, 81 (Hualing Fu et al. eds., 2018) (“Moreover, time and time again the CCP promoted the Ma Xiwu style as an antidote to the legal formalism and professionalisation associated with the rule of law. The two opposing paradigms of justice have long co-existed in an unstable balance, each rising or falling in inverse relation to the other as political winds shift.”)

*policy, and deliver more timely and responsive justice.*<sup>150</sup>

Up until “the late 1980s, the political ideology of the CCP demanded that courts settle disputes using ‘democratic methods’—that is, by persuading and educating disputants rather than adjudicating their disputes according to established legal principles.”<sup>151</sup> But few can truly emulate the deeds ascribed to Ma Xiwu, and when judicial salaries and promotions were tethered to mediation rates, many judges sought to improve their prospects by “persuad[ing], plead[ing], and even forc[ing] the litigation parties to accept mediation result.”<sup>152</sup> Writing in 2018, Li Yedan, Joris Kocken, and Benjamin van Rooij described an intermediate court where “[o]n the 21<sup>st</sup> of each month, the evaluation results punctually landed on each judge’s table, including their results of mediation rate. The judges’ names were listed in descending order, from the best to the worst.”<sup>153</sup> Under such pressure, judges in the court promoted settlement at all stages of the litigation process.<sup>154</sup>

More generally, “strategies with compulsory elements, such as persuasion, procedural delay, and the threat of unfavorable judgment,” were frequently deployed “to force litigants to accept mediation.”<sup>155</sup> One grassroots judge explained to a Peking University researcher that compared to formal judgments, mediation agreements were easier to issue and enforce since they did not have to abide by formal procedures and were not ordinarily subject to appeal, retrial, or reversal.<sup>156</sup> Even if “the parties, in general, do not request for mediation, and seek justice through judgments, they have limited knowledge

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<sup>150</sup> Tiffert, *supra* note 148, at 81.

<sup>151</sup> Hualing Fu & Richard Cullen, *The Development of Public Interest Litigation in China*, PUBLIC INTEREST LITIGATION IN ASIA 9, 28–29 (2010).

<sup>152</sup> Randall Peerenboom & Xin He, *Dispute Resolution in China: Patterns, Causes and Prognosis*, 4 E. ASIA L. REV. 1, 27 (2009).

<sup>153</sup> Li Yedan, Joris Kocken & Benjamin van Rooij, *Understanding China’s Court Mediation Surge: Insights from a Local Court*, 43 LAW & SOC. INQUIRY 58, 66 (2018).

<sup>154</sup> *Id.* at 66–76.

<sup>155</sup> Liu Sida, *The Shape of Chinese Law*, 1 PEKING U. L.J. 415, 420 (2014).

<sup>156</sup> Jiang Shigong, *Falv shi Ruhe Shijian de – Yiqi Xiangcun Tiaojiean de Fenxi* (法律是如何实践的——一起乡村调解案的分析) [How is Law Implemented: The Analysis of a Village Civil Mediation Case], in TIAOJIE, FAZHI YU XIANDAIXING [Mediation, Legality and Modernity: Mediation in China] (Jiang Shigong ed., 2000); see Zhang Yanli, *Fayuan Tiaojie Qianzhi Moshi Xuanze: Minshi Shenqian Tiaojie* (法院调解前置模式选择: 民事审前调解) [Analysis about the Model Choice of Court Pre-Mediation: Civil Pretrial Mediation], FAXUE 106, 106 (2011).

about legal rules and procedures, and can still be persuaded to accept mediation results.”<sup>157</sup> Judges arrange ex-parte meetings to urge and, sometimes, hector parties into mediated outcomes. Illustrative of the practice of “back to back” (beikaobei) mediation,<sup>158</sup> judges presiding over personal lending cases might intimate to defendants the possibility of higher damages being found at trial while separately telling plaintiffs about difficulties of enforcing court awards.<sup>159</sup> Judges foist settlements agreements onto the parties, even when they know the possibility of the contractual terms being fulfilled to be remote.<sup>160</sup> Parties who agree in the moment often come to regret their decisions.<sup>161</sup> And even when the parties refuse to budge, statements made by judges in the course of mediation cast doubts over the fairness of later proceedings.<sup>162</sup>

The uneasy relationship between mediated justice and the rule of law becomes even more fraught when coaxing shades into coercion. Yang Su and Xin He vividly document the Gaolaida case where seventy-seven workers sought unpaid overtime wages from a hardware and plastic manufacturer.<sup>163</sup> To pacify the angry employers and force the company to the mediation table, the court arbitrarily froze the company’s cash accounts and admonished corporate executives “to embark on

<sup>157</sup> *Id.*

<sup>158</sup> Liu, *supra* note 155, at 427–28; *see also* MINSHI SUSONG LVSHI SHIWU (XIUDINGBEN) (民事 诉讼 律 师 实 务) [The Lawyer’s Practice in Civil Litigation] (Tan Fang eds., 2016).

<sup>159</sup> Shao Liuyi, *Beilun yu Biran: Fayuan Tiaojie de Huigui (2003–2012)* (悖论与必然：法院调解的回归) [Paradox and Necessity: The Return of Court Mediation (2003–2012)], 5 HUADONG ZHENGFA DAXUE XUEBAO [ECUPL Journal] 112, 122 (2013).

<sup>160</sup> Li Hao, *Dangxia Fayuan Tiaojie zhong Yige Zhide Jingti de Xianxiang: Tiaojie Anjian Daliang Jinru Qiangzhi Zhixing Yanjiu* (当下法院调解中一个值得警惕的现象：调解案件大量进入强制执行研究) [The Alarming Phenomenon in Court Mediation: Research 4on Compulsory Enforcement in A Large Number of Mediation Cases], 1 FAXUE 139, 144 (2012) (“In some cases, where debtors did not have any ability of repayment and judges knew that, even if a mediation agreement is reached, it would be impossible to enforce the agreement. However, considering the mediation rate requirements, courts nonetheless insisted to mediate.”)

<sup>161</sup> Sun Zhaohui, *Lun Susong zhong Budang Tiaojie Xingwei dui Sifa Gongxinli de Sunhai* (论诉讼中不当调解行为对司法公信力的损害) [The Damages of Improper Mediation Acts during Litigation Imposed on Public Trust in the Judiciary], YUNNAN DAXUE XUEBAO FAXUEBAN [Journal of Yunnan University (Law Edition)] 115, 116 (2015).

<sup>162</sup> *Id.*; Li, *supra* note 160, at 141.

<sup>163</sup> Yang Su & Xin He, *Street as Courtroom: State Accommodation of Labor Protest in South China*, 44 L. & SOC’Y REV. 157, 166–67 (2010).

and commit to the success of a judicial mediation.”<sup>164</sup> Strong-arm tactics such as these not only deny the parties’ autonomy to resolve their disputes as they wish but also deprive them of the opportunity to protect their own interests through negotiation.<sup>165</sup> As implemented by judicial authorities, the mediatory paradigm is widely criticized for pursuing social harmony at expense of lawful rights and public trust in the courts.<sup>166</sup> Rather than “make the public feel fairness and justice from every judicial case,”<sup>167</sup> the syndrome of “endless mediation and no judgment” (“jiutiao bupan”) has frustrated litigants in search of justice.

The view that the inherent contradiction between mediation and adjudication cannot be squared appears to be universally acknowledged.<sup>168</sup> But technology promises to reconcile the two by encouraging parties to bargain in the shadow of the law.<sup>169</sup> In contrast to the subjective prognoses of motivated judges, the evaluations performed by intelligent machines might seem more objective and legitimate. And rather than cajole or bully litigants into settlement, these artificial counselors proffer summaries of the perils of litigation, précis that are ostensibly backed by dispassionate consideration of legal sources and materials. In so doing, they recast mediation, not as the abnegation of law, but as a dispute resolution mechanism that acknowledges legal entitlements and liabilities. Indeed, Man Zhiqiang, president of Xinyuan People’s Court in Shandong Province the assessment of litigation risk to be a form

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<sup>164</sup> *Id.*

<sup>165</sup> Li Xilian, *Fayuan Tiaojie Youxian de Lengsikao* (法院调解优先的冷思考) [Contemplation of Prioritizing Court Mediation], *FALV KEXUE* [Legal Science] 12, 15 (2010).

<sup>166</sup> Li, *supra* note 160, at 141.

<sup>167</sup> Yang Lina & Cheng Hongyi, *Xi Jinping: Nuli Rang Renmin zai Meiyige Sifa Anjian zhong Douneng Ganshoudao Gongping Zhengyi* (习近平: 努力让人民在每一个案件中都能感受到公平正义) [Xi Jinping: Strive to Make the Public Feel Fairness and Justice in Every Judicial Case], *CPC NEWS*, Jan. 8, 2013, <http://cpc.people.com.cn/n/2013/0108/c64094-20125182.html>.

<sup>168</sup> Huang Min, Chen Xiaoli, *Guanyu Fayuan Minshi Tiaojie Jiazhi de Sikao* (关于法院民事调解价值的思考) [Contemplating the Value of Civil Mediations in Courts], *CHINA COURT*, July 22, 20008, <https://www.chinacourt.org/article/detail/2008/07/id/314025.shtml>; *see also* Xiao Yang, *Rang “Dongfang Jingyan” Chongfang Guangcai: Zai Yatai Shouxi Dafaguan Huiyi Shang de Yanjiang* (让“东方经验”重放光彩: 在亚太首席大法官会议上的演讲) (Let the “Eastern Experience” Shine Again: Speech Presented at the Conference of Chief Justices of the Asia-Pacific in 2004), 5 *PANJIE YANJIU* [Studies of Precedent and Mediation], 1, 1–5, (2004).

<sup>169</sup> Cf. Robert H. Mnookin & Lewis Kornhauser, *Bargaining in the Shadow of the Law: The Case of Divorce*, 88 *YALE L.J.* 950 (1979).

of “ideological work with the masses.” “After receiving the [litigation] risk assessment report, paying special attention to the five aspects of [litigation] costs, over 90 percent of disputants were pacified and able to analyse and resolve problems calmly and rationally,” Man attested.<sup>170</sup> As compared to judicial suasion, algorithmic evaluations might be a more principled—and successful—approach to encouraging mediation. That, at least, seems to be the lesson of Beijing Daily’s article featuring Mr. Zhang, a corporate legal representative. Standing in front of a litigation guidance system in Beijing’s Fangshan District, Mr. Zhang gushed: “With this machine, there is no need for us to seek a lawyer for consultation. It will save us so much energy and preserve judicial resources for courts.”<sup>171</sup> The computer estimating a high probability of the company losing its lawsuit, Mr. Zhang put in a request for mediation straightaway.<sup>172</sup>

### C. Legal Consciousness and Party Hegemony

The People’s Republic has embarked on several campaigns to popularize laws and to encourage citizens to “use the law as their weapon” in the face of oppression. At the same time, it struggles mightily to fix the meaning of the laws and the ways the laws are invoked. Sometimes, state media profile and praise those who render legal assistance to the poor and defenseless. At other times, government agencies police and persecute advocates who resort to extreme tactics in furtherance of their cause or who galvanize plaintiffs to seek policy change. Government attitude towards rights-defense or *weiquan* activities fluctuate depending on time, place, circumstance, and hierarchy. When people “use the law as their weapon,” private wrongs and public injustices are addressed in a manner and forum prescribed by the state. But law can also be invoked to crystallize grievances against the state and tame its power. The political ambivalence of *weiquan* is mirrored in its semantic ambiguity. Praised in official discourse as means for individuals to safeguard their legitimate interests, the concept of *weiquan*

<sup>170</sup> Xiao Chunyan, Zhang Hongjun & Li Nan, *Wubizhang Suanchu Dahexie* (五笔帐算出大和谐) [Five Costs Were Calculated to Achieve Grand Mediation], CHINA COURT, Oct. 15, 2013, <https://www.chinacourt.org/article/detail/2013/10/id/1107911.shtml>.

<sup>171</sup> Wei Wenxin, *Susong Fengxian Pingguji zai Beijing Fangshan Shanggang* (诉讼风险评估机在北京房山上岗) [Litigation Risk Assessment Machines Started Their Work in Fangshan District of Beijing], BEIJING DAILY, Aug. 14, 2019, [http://www.cnr.cn/bj/jrbj/20190814/t20190814\\_524730629.shtml](http://www.cnr.cn/bj/jrbj/20190814/t20190814_524730629.shtml).

<sup>172</sup> *Id.*

was later appropriated by civil society to challenge the regime, particularly on questions of human rights.<sup>173</sup> But even as its valence shifted, the term *weiquan* was never repudiated by state actors. It remains part of the Ministry of Justice's language and policy, even as rights defenders are suppressed in the name of public security.<sup>174</sup>

The example of "barefoot lawyer" Zhou Guangli is illustrative. Barefoot lawyers have no formal qualifications; they are citizen representatives who volunteer to help others reclaim their rights.<sup>175</sup> Like many barefoot lawyers, Zhou learnt law by doing it. His foray into *weiquan* was precipitated by a street event popularizing the Administrative Litigation Law. To bring law to the countryside, judges from the administrative division of the Yanggu County court distributed pamphlets to passer-bys, declaring that ordinary people can sue the government."<sup>176</sup> His curiosity piqued, Zhou urged a neighbor who had been fined by the township authorities to seek redress in the county court. Initially belligerent, the township government eventually caved, returning the contested money before the judicial hearing.<sup>177</sup> This modest success launched a career that spanned 1,674 lawsuits between September 1995 and December 2005.<sup>178</sup> Bullied by local official in the early years, Zhou slowly rose to prominence. Villagers sought him out and his exploits were recounted in the mainstream press. His influence became such that in November 1999, the Yanggu County Government convened a workshop on the "Zhou Guangli Phenomenon" which it reproved. In September 2000, however, a joint investigation by the municipal, prefecture, and county governments established that the Zhou Guangli Phenomenon "was beneficial to society and was well-trusted and welcomed by the masses."<sup>179</sup> This sort of activity should be "properly handle[d], guide[d], and regulate[d]." <sup>180</sup> In view of these conclusions, the country government left Zhou to his own devices and his endeavors grew in size and scope. Eventually, however, the affirmation of the joint investigation receded and the tribulations of barefoot lawyering took a physical and

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<sup>173</sup> JONATHAN BENNEY, DEFENDING RIGHTS IN CONTEMPORARY CHINA 25–26 (2013).

<sup>174</sup> *Id.* at 27.

<sup>175</sup> Xing Ying, *Barefoot Lawyers and Rural Conflicts*, in RECLAIMING CHINESE SOCIETY 64, 81 (You-tien Hsing & Ching Kwan Lee eds., 2010).

<sup>176</sup> *Id.* at 69.

<sup>177</sup> *Id.*

<sup>178</sup> *Id.* at 66.

<sup>179</sup> *Id.* at 68.

<sup>180</sup> *Id.*



emotional toll on Zhou. After being beaten unconscious by court police in June 2006, Zhou decided to give up his lay practice.

Zhou Guangli's story is not unique among legal activists. The Beijing Zhongze Women's Legal Counselling and Service Center (Zhongze Center) was, in a previous incarnation, the Peking University's Centre for Women's Law Studies and Legal Services (Peking University Center). Founded by one-time journalist Guo Jianmei in 1995 after she attended the United Nation's Fourth World Conference on Women in Beijing,<sup>181</sup> the Peking University Center specialized in women's rights, litigating for change and lobbying for reform. Among other social problems, the Center attended to the plights of villagers deprived of land in their birthplace after marriage, employees dismissed after falling pregnant, and victims of domestic violence and sexual assault.<sup>182</sup> As part of its litigation strategy, the Center publicized its cases, organizing press events and seminars to bring public and academic opinion to bear on local judges.<sup>183</sup> The Center also gathered experts to analyze laws and regulations for constitutional violations and propose legislative revisions.<sup>184</sup> The Center became widely acclaimed and its director won accolades for her vision and dedication. Nominated for the Nobel Prize in 2005, Guo was featured in a June 2009 China Daily article that described her as "one of China's leading public interest lawyers."<sup>185</sup> The party-owned outlet recounted her struggle on behalf of women, highlighting her receipt of the 2007 Global Women Leadership Award.

Indeed, advocacy of women's rights is ideologically orthodox—the Party has historically championed gender equality,<sup>186</sup> proclaiming that "women hold up half the sky."<sup>187</sup> But the ability of the Peking University Center to galvanize domestic support, rally civil society, and attract independent funding unsettled the establishment.<sup>188</sup> The government became

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<sup>181</sup> Jun Li, *The Growth and Dilemma of Women's NGOs in China: A Case Study of Beijing Zhongze Legal Consulting Service Center for Women*, in *SOCIAL ISSUES IN CHINA: GENDER, ETHNICITY, LABOR, AND THE ENVIRONMENT* 85, 87 (Zhidong Hao & Sheying Chen eds., 2013).

<sup>182</sup> *Id.* at 91; Fu & Cullen, *supra* note 151, 22 (2010).

<sup>183</sup> Li, *supra* note 181, at 92.

<sup>184</sup> *Id.* at 92–93.

<sup>185</sup> Wang Ru, *In the Public Interest*, CHINA DAILY, June 29, 2009, [http://www.chinadaily.com.cn/cndy/2009-06/29/content\\_8331396.htm](http://www.chinadaily.com.cn/cndy/2009-06/29/content_8331396.htm).

<sup>186</sup> CHUN LIN, *THE TRANSFORMATION OF CHINESE SOCIALISM* 113–18 (2006).

<sup>187</sup> Gail Hersatter, *State of the Field: Women in China's Long Twentieth Century*, 63 THE JOURNAL OF ASIAN STUDIES 991, 1013 (2004).

<sup>188</sup> Diana Fu & Greg Distelhorst, *Grassroots Participation and Repression under Hu Jintao and Xi Jinping*, 79 THE CHINA JOURNAL 112–13 (2018).

increasingly less tolerant of the Center's activities.<sup>189</sup> In 2010, Peking University, buckling to external pressure, terminated the affiliation of the Center which was then relocated to an apartment in north Beijing and registered as the Zhongze Center. The Zhongze Center continued to provide legal aid to women, even collaborating with provincial Women's Federations on projects,<sup>190</sup> but the respite was short-lived. In 2016, barely four months after China touted its progress at a United Nations event commemorating the twentieth anniversary of the Fourth Women's Conference, the Zhongze Women's Center was ordered to close.<sup>191</sup> A post on its website said it was "tak[ing] a rest."<sup>192</sup> It never returned.

The fates of Zhou Guangli and the Zhongze Center demonstrate how the assertion of rights espoused and promoted by the party-state might be construed as politically dangerous when it becomes too disruptive or inspirational. The Xi administration's strategy of "[p]roactive repression" operates by "completely dismantl[ing] advocacy organizations and clip[ping] their ties to activist networks before the outbreak of organized mass incidents."<sup>193</sup> Courts for their part have mediated the vindication of the lawful rights of particular litigants, on the one hand, and the imperative to quell organized dissent, on the other, by atomizing collective actions. Since 1991, the Chinese Law of Civil Procedure has provided for the filing of joint lawsuits,<sup>194</sup> although class representation was selectively permitted before then. The An Yue Rice-Seed Case was the first mass dispute handled on a representative basis.<sup>195</sup> In 1985, 1,569 farmers in Sichuan Province sued to recover their losses on a seed contract.<sup>196</sup> According to one observer, the government,

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<sup>189</sup> Li, *supra* note 181, at 101.

<sup>190</sup> *Id.* at 100.

<sup>191</sup> Didi Kirsten Tatlow, *China Is Said to Force Closing of Women's Legal Aid Center*, N.Y. TIMES, 26 Jan. 2016, <https://www.nytimes.com/2016/01/30/world/asia/beijing-women-legal-aid-guo-jianmei.html>.

<sup>192</sup> *Id.*

<sup>193</sup> Fu & Distelhorst, *supra* note 188, at 113.

<sup>194</sup> Zhonghua Renmin Gongheguo Minshi Susongfa (中华人民共和国民事诉讼法) [Civil Procedure Law of the People's Republic of China] (promulgated by the National People's Congress, Apr. 9, 1991, effective Apr. 9, 1991), Arts. 54 & 55.

<sup>195</sup> The Supreme Peoples' Court of the People's Republic of China, Zhonghua Renmin Gongheguo Zuigao Renmin Fayuan Gongbao (1986nian) (中华人民共和国最高人民法院公报(1986年)), [Gazette of the Supreme People's Court (1986)], No. 3.

<sup>196</sup> *Id.*

“fearful of unrest . . . pushed local courts to handle the cases quickly by trying them together rather than individually,”<sup>197</sup> and eight of the plaintiffs were eventually allowed to prosecute claims on behalf of the group.<sup>198</sup> This procedural device was invoked several times before its eventual codification.<sup>199</sup> Articles 54 and 55 of the Civil Procedure Legislation now contemplate class actions involving a fixed and indeterminate number of plaintiffs respectively. Animating these provisions is the notion that class actions “serv[e] as a safety valve for a widening range of popular complaints”—it is better for disputes to be settled by talk than through violence.<sup>200</sup>

But class actions were also perceived as dangerous to social stability.<sup>201</sup> Exemplary of this suspicion is the Guangxi High People’s Court’s 2003 Circular to inferior courts directing them to reject, for the time being, cases falling into one of thirteen categories.<sup>202</sup> Included in the suspension were claims against local government agencies or enterprises that fail to spend the money collected from their employees for the purposes advertised, complaints of market manipulation and insider dealing on the securities market, and grievances arising out of

<sup>197</sup> Shai Oster, *Major Lawsuit Won by Workers in Zhejiang*, ASIaweek, Nov. 9, 2001, <https://clb.org.hk/content/major-lawsuit-won-workers-zhejiang>.

<sup>198</sup> The Supreme Peoples’ Court of the People’s Republic of China, *supra* note 195.

<sup>199</sup> Zuigao Renmin Fayuan Guanyu Shenli Nongcun Chengbao Hetong Jiufen Anjian Ruogan Wenti De Yijian (最高人民法院关于审理农村承包合同纠纷案件若干问题的意见) [Opinions of the SPC on several issues regarding the hearing of Village Assignment Contract Dispute Cases] (promulgated by the Supreme People’s Court, Apr. 14, 1986, effective Apr. 14, 1986); Zuigao Renmin Fayuan Guanyu Zai Shenli Jingji Hetong Jiufen Anjian Zhong Juti Shiyong Hetong Fa De Rougan Wenti De Jieda (最高人民法院关于在审理经济合同纠纷案件中具体适用合同法的若干问题的解答) [Response of the SPC regarding Some Questions Concerning the Specific Use of the Economic Contract Law in the Judging of Economic Contract Dispute Cases] (promulgated by the Supreme People’s Court, July 21, 1987, effective July 21, 1987).

<sup>200</sup> Benjamin L. Liebman, *China’s Courts: Restricted Reform*, 191 THE CHINA QUARTERLY 620, 635 (2007); Oster, *supra* note 197.

<sup>201</sup> Michael Palmer & Chao Xi, *Collective and Representative Actions in China*,

[http://globalclassactions.stanford.edu/sites/default/files/documents/China\\_National\\_Report.pdf](http://globalclassactions.stanford.edu/sites/default/files/documents/China_National_Report.pdf) (“Political ramifications of the [class action] lawsuit also weigh heavily on the courts’ mind.”).

<sup>202</sup> Guangxi Zhuangzu Zizhiqu Gaoji Renmin Fayuan Guanyu 13 Lei Zhanbu Shouli Anjian de Tongzhi (广西壮族自治区高级人民法院关于 13 类暂不受理案件的通知) [Guangxi Autonomous Region Higher People’s Court Circular Regarding Temporarily Not Accepting Thirteen Categories of Cases] (2003).

corporation-wide retrenchment or wage delays.<sup>203</sup> As explained by the high people's court to the media, such disputes were ill-suited to a judicial forum because they "involved a large number of appellants" and tended to "be highly sensitive and attract public attention".<sup>204</sup> More than two years later, the SPC issued the "Notice Regarding Problems with the Acceptance of Class Action Lawsuits by the People's Courts."<sup>205</sup> Promulgated on 30 December 2005, the Notice restricted collective lawsuits to the basic people's courts; the high people's courts were to entertain such actions only in special circumstances and even then only with the approval of the SPC. According to its drafter, the Notice was designed to "nip collective disputes in the bud."<sup>206</sup>

In exercising their virtually unfettered discretion to atomize class actions, local courts seek, among other things, to quash any risk of group dissent.<sup>207</sup> Collective disputes that pit ordinary citizens against well-connected elites might spiral out of control, spilling out of the courtroom and into the streets. As evidenced by the Guang Xi High Court's 2003 Circular, large-scale labor incidents are deemed especially threatening to social stability: "as rights infringements, such as arrears of wages and overtime payments, are often factory-wide, they often engender 'contentious gatherings' of workers; these gatherings are likely to escalate into unrest and, moreover, to harbor elements that might generate new dynamics of labor action."<sup>208</sup> Collective workplace disputes are "incessantly" dismantled.<sup>209</sup> During the

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<sup>203</sup> *Id.*

<sup>204</sup> Luo Changping, *Guangxi Gaoyuan Xiawen Bushouli 13lei Anjian* (广西高院下文不受理 13 类案件) [Guangxi Higher People's Court Issued an Document which Required Not to Accept 13 Types of Cases], XINJIN DAILY, Aug. 12, 2004, <http://news.sina.com.cn/c/2004-08-12/02233375229s.shtml>; see also Palmer & Xi, *supra* note 201, at 8.

<sup>205</sup> Zuigao Renmin Fayuan Guanyu Renmin Fayuan Shouli Gongtong Susong Anjian Wenti de Tongzhi (最高人民法院关于人民法院受理共同诉讼案件问题的通知) [Notice Regarding Problems with the Acceptance of Class Action Lawsuits by the People's Courts] (promulgated by the Supreme People's Court, Dec. 30, 2005, effective Jan. 1, 2006).

<sup>206</sup> Ji, Min, *Gaige Minshi Gongtong Susong Anjian Shouli Fangshi* (改革民事共同诉讼案件受理方式) [Reforming the Approaches to Accepting Civil Class Action Lawsuits] 3 RENMIN SIFA 14, 14–16 (2006).

<sup>207</sup> Rachel E. Stern, ENVIRONMENTAL LITIGATION IN CHINA: A STUDY IN POLITICAL AMBIVALENCE 49 (2013) (listing three reasons why case filing divisions might break up class actions—"to maximize per-case court fees, boost the number of cases handled, or disarm collective action").

<sup>208</sup> Feng Chen & Xin Xu, "Active Judiciary:" Judicial Dismantling of Workers' Collective Action in China, 67 THE CHINA J. 87, 91 (2012).

<sup>209</sup> MARY E. GALLAGHER, AUTHORITARIAN LEGALITY IN CHINA: LAW,

financial crisis of 2009, judges were dispatched to sites of labor confrontation to defuse tensions by funneling disputes into the legal system.<sup>210</sup> These claims were then disaggregated and processed at the individual level.<sup>211</sup> Over the years, the “active fragmentation of disputes by arbitrators and other government units tasked with social responsibility maintenance” has resulted in a “collapse in the number of collective disputes going through the formal systems of arbitration and litigation.”<sup>212</sup> As documented by Mary Gallagher, in 2011, only 2% of all arbitrated labor disputes were resolved as class actions.<sup>213</sup>

The party-state’s wariness of organized contention is, perhaps, reflected most clearly in the 2006 Guiding Opinion on Lawyers Handling Mass Litigation.<sup>214</sup> Promulgated by the All China Lawyers Association—a national body that regulates the legal profession—the Guiding Opinion addresses the professional responsibilities of attorneys acting in collective lawsuits. “Lawyers,” the Guiding Opinion proclaims, “must safeguard the country’s stability” and “the proper handling of mass litigation is essential to the successful construction of a socialist harmonist society.” Specifically, only lawyers possessing “good political quality” and “abundant experience” may conduct the initial consultation, and the assent of three partners is required for a firm to take up a mass litigation, defined as a case involving ten or more plaintiffs. In a striking vitiation of the lawyer-client privilege, attorneys must report to the relevant authorities happenings that may cause the dispute to “intensify” and litigants whose activities threaten to disrupt social stability. Lawyers are also admonished not to stir up news” and to “exercise caution” when communicating with foreign organizations and media. A lawyer who takes on mass litigation is bound to inform the local lawyers association; a law firm that does so must keep its supervising lawyers association apprised.

In the eye of the regime, the legal apparatus protects and placates citizens but legal actors may catalyze and coordinate

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WORKERS, AND THE STATE 93 (2017).

<sup>210</sup> *Id.* at 93–94.

<sup>211</sup> *Id.* at 94.

<sup>212</sup> *Id.* at 93–94.

<sup>213</sup> GALLAGHER, *supra* note 209.

<sup>214</sup> Zhonghua Quanguo Lüshi Xiehui Guanyu Lüshi Banli Quntixing Anjian Zhidao Yijian (中华全国律师协会关于律师办理群体性案件指导意见) [Guiding Opinions of All China Lawyers Association on Handling Class Action Lawsuits by Lawyers] (promulgated by the All China Lawyers Association, Nov. 16, 2017, effective Nov. 16, 2017).

dissent. Technology alleviates this tension in authoritarian legalism by bringing law—and courts—closer to the people, and in so doing reduce the need for individuals to rely on others, be they friends or colleagues, volunteers or professionals. By helping citizens know and claim their rights, the legal system broadens popular access to justice. At the same time, however, it inhibits the coalescence of grievances and dampens the centrality of rights advocates. Villagers able to contest an administrative fine on their mobile phones will be less likely to consult neighbors like Zhou Guangli. Women able to sue employers for gender discrimination through Wechat will be less inclined to turn to non-governmental organizations like the Zhongze Center.

Disintermediation of the legal profession and its allies is not an idle or fantastical possibility. A dearth of plaintiffs has plagued lawyers pursuing social change through litigation.<sup>215</sup> Victims are not especially keen on being the face of a public interest lawsuit that seeks to “make the case educational for the general public, a deterrent for offending parties and persuasive to decision-makers.”<sup>216</sup> Take for example Beijing Yirenping, an anti-discrimination group that fights, among other things, for carriers of the Hepatitis-B virus (HBV). By articulating the legal injury suffered by HBV-carriers, Yirenping gives them a voice in law and policy.<sup>217</sup> Nevertheless, Yirenping struggles to find plaintiffs.<sup>218</sup> To overcome this difficulty, Yirenping’s “prevailing practice . . . is to demand as much monetary [compensation] as possible” so as to give victims a strong financial incentive to step forward.<sup>219</sup> Yirenping also mitigates the emotional burden on victims by protecting their identities.<sup>220</sup> The organization has successfully obtained judicial assistance on this front; when it comes to media coverage, “Yirenping insists on the use of pseudonym[s] for its plaintiffs,” and photographs are taken so as to render their faces unrecognizable.<sup>221</sup> While

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<sup>215</sup> Fu Hualing, *Lawyers for Human Rights Protection: from Legal Aid to Political Lawyering*, in HANDBOOK ON HUMAN RIGHTS IN CHINA 472, 481 (Sarah Biddulph & Joshua Rosenzweig, eds. 2019); see STERN, *supra* note 207, at 53 (“Several [environmental] lawyers I interviewed spent significant time investigating cases and collecting evidence only to find complainants unwilling to sue.”).

<sup>216</sup> *Id.* at 482.

<sup>217</sup> Fu Hualing, *Embedded Socio-Legal Activism in China: The Case of Yirenping*, 42 H.K. L.J. 245, 258 (2012).

<sup>218</sup> *Id.* at 260–61.

<sup>219</sup> *Id.* at 261.

<sup>220</sup> *Id.* at 262–63.

<sup>221</sup> *Id.* at 263.

Yirenping is sensitive to economic and privacy considerations, a low-cost, low-exposure, alternative for seeking justice may dissuade plaintiffs from turning to rights defense groups. The lack of a critical mass will make it difficult for such organizations to cultivate networks and push for systematic change.

Law is a double-edged sword for the party-state. The justice system pacifies disagreements and keeps the peace, but it also sustains intermediaries who bring claimants together and thereby build a constituency. Deliberately or organically, the technologization of the justice system enhances authoritarian legality by promoting legal consciousness and mobilization at the retail, not wholesale, level, thereby assuring the hegemony of the party-state vis-à-vis civil society and the legal community.

### III. SOME EMPIRICAL QUESTIONS

So far, we have indicated how technology alleviates—even reconciles—the tensions defining Chinese law and legal institutions today and articulated its promise and perils. But as Professor Zhu Suli remarked in a lecture addressing the shadow cast by politics on judicial reform and independence in China, “conclusions . . . cannot be reached simply through debates; they will come as the result of empirical research, which requires time.”<sup>222</sup> Similarly, the overall impact of technologization on justice and its administration in the People’s Republic cannot be determined by reasoning theoretically or in the abstract. Will the integration of artificial intelligence into judicial operations enhance the perceived legitimacy of courts? Will it diminish the role of advocates in dispute resolution, rendering the legal order more state-dominated and less pluralistic? These questions—and others—cannot be fully addressed in the absence of data.

As a first step, we canvass the thoughts of netizens and legal aid seekers on the technologization of the legal system. The opinions of netizens are valuable because the internet is, perhaps, the most influential forum for public discourse in China.<sup>223</sup> The perspectives of legal aid seekers are also important because they are active participants in rather than passive observers of the litigation process. As prospective claimants, their reception of technological innovations in the law have far-reaching implications for socio-political order. In sum, although internet

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<sup>222</sup> Zhu Suli, *Political Parties in China’s Judiciary* 17 DUKE J. COMP. & INT’L L. 533, 556 (2007).

<sup>223</sup> See Haifeng Huang, *The Pathology of Hard Propaganda*, 80 J. OF POL. 1034, 1035 (2018).

users and legal aid seekers do not exhaust the populace, they are among the prime audiences and beneficiaries of the Chinese quest for digital justice and smart courts.

Although the questions we posed were not especially sensitive politically, there lurks the possibility of citizens misrepresenting their views to conform to the party-state's narratives and ideologies.<sup>224</sup> Whereas evidence about the prevalence and magnitude of political wariness in China remains mixed,<sup>225</sup> past research suggests that self-censorship, rather than false reporting, is the preferred strategy of those whose attitudes and beliefs deviate from official discourse.<sup>226</sup> To mitigate any impact of political wariness on our findings, non-response options were offered throughout.

#### A. Netizens

In early 2020, we fielded an online survey to a sample of 1050 respondents drawn by Qualtrics. Subjects recruited from an internet platform are not nationally representative. First, internet users are appreciably different from non-users. As a group, the former is younger, more educated, and more socially-connected than the latter.<sup>227</sup> Compared to the general population, netizens are less trusting of the government, expect to have a greater voice in public affairs, and are more likely to dissent from the government's position.<sup>228</sup> Moreover, there is the problem of self-selection lurking in the background. For example, internet users who choose to participate in an online survey may be more vocal or invested than others who opt out. This concern,

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<sup>224</sup> See TIMUR KURAN, *PRIVATE TRUTHS, PUBLIC LIES* 85–88 (1995).

<sup>225</sup> Compare Xuchuan Lei & Jie Lu, *Revisiting Political Wariness in China's Public Opinion Surveys: Experimental Evidence on Responses to Politically Sensitive Questions*, 26 J. CONTEMP. CHINA 213 (2016) (failing to detect a higher incidence of politically correct answers when interviewers exhibited affiliation with the party-state rather than an academic institution) with Darrel Robinson & Marcus Tannenber, *Self-censorship of Regime Support in Authoritarian States: Evidence from List Experiments in China*, RESEARCH AND POLITICS (2019) (finding greater levels of expressed support for the regime when politically sensitive questions were asked directly rather than indirectly through a list); see also Wenfang Tang & Yang Zhang, *Political Trust: An Experimental Study*, in WENFANG TANG, *CHINESE POLITICAL CULTURE AND REGIME SUSTAINABILITY* 134 (2016) (estimating that only 8 to 10% of respondents hide their dissatisfaction with the central government).

<sup>226</sup> Ren, Liying, *Surveying Public Opinion in Transitional China: An Examination of Survey Response*, PhD diss., University of Pittsburgh (2009).

<sup>227</sup> YA-WEN LEI, *THE CONTENTIOUS PUBLIC SPHERE: LAW, MEDIA, AND AUTHORITARIAN RULE IN CHINA* 132–33 (2017).

<sup>228</sup> *Id.*



however, might not be too grave. Previous research found a survey of online volunteers to be reflective of the attitudes of the internet users on a range of social and political issues when appropriately weighted.<sup>229</sup>

Like other studies conducted via an online platform, our respondents are disproportionately male, urban, and young even when compared to the universe of internet users in China.<sup>230</sup> Raking is a statistical method that assigns weights to individual observations so as to bring the marginal distributions of the demographic variables in the sample closer to those in the population. Although the raking algorithm was implemented post-data collection, it did not alter the tenor of our findings which are presented in unadjusted form here.

	Internet Population <sup>231</sup>	Qualtrics Sample
<b>Sex</b>		
Female	47.6%	45.0%
Male	52.4%	55.1%
<b>Residence</b>		
Rural	26.3%	7.0%
Urban	73.7%	93.0%
<b>Age</b>		
20—29	31.1%	36.1%
30—39	29.9%	41.7%
40—49	21.8%	18.7%
50—59	8.5%	3.0%
60+	8.7%	0.6%

Demographic Profile of the Internet Sample Recruited by Qualtrics  
vis-à-vis China's Internet Population

While the disjunct between expectation and experience could induce “disillusionment” and a loss of faith in the legal system,<sup>232</sup> we found that netizens who participated in a lawsuit

<sup>229</sup> Xiaojun Li, Weiyi Shi, & Boliang Zhu, *The Face of Internet Recruitment: Evaluating the Labor Markets of Online Crowdsourcing Platforms in China*, RES. & POL. 1 (2018).

<sup>230</sup> Cf. *id.* at 2–3; Supplemental Material for: Haifeng Huang, *The Pathology of Hard Propaganda*, 80 THE J. OF POL. 1034, 1034–38 (2018).

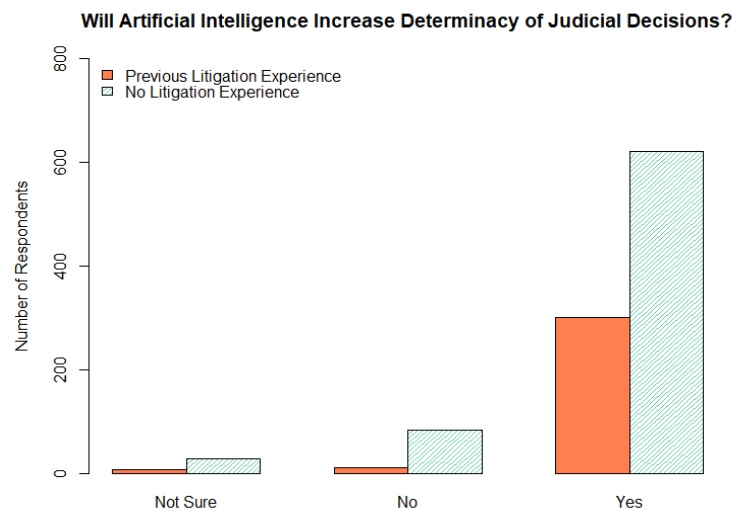
<sup>231</sup> CHINA INTERNET NETWORK INFORMATION CENTER, STATISTICAL REPORT ON INTERNET DEVELOPMENT IN CHINA (August 2019), *available at* <https://cnnic.com.cn/IDR/ReportDownloads/201911/P020191112539794960687.pdf>.

<sup>232</sup> Mary E. Gallagher & Yuhua Wang, *User and Non-Users: Legal Experience and Its Effect on Legal Consciousness*, CHINESE JUSTICE: CIVIL DISPUTE RESOLUTION IN CONTEMPORARY CHINA 204, 204 (Margaret Woo &



would trust the latter and 26.0% the former; 18.0% were ambivalent. Beyond reservations about technological capabilities, internet users listed personal accountability, professional knowledge, practical know-how, mental agility, and the subjectivity of law as reasons for preferring human to artificial counsel. The minority who favored the algorithm cited its impartiality and precision. In their eyes, the absence of interests or emotions made the machine's conclusions more objective and trustworthy.

Despite the general sense that computer algorithms were not perfect substitutes for human lawyers, technology was overwhelmingly perceived to be salutary for law and legal institutions. 90.8% of respondents believed the digitization and publication of judicial documents to have increased public confidence in the administration of justice. 4.5% felt differently while 4.8% were unsure. The naysayers doubted the correspondence between rhetoric and reality, referencing political control of the judiciary and differential standards for elites. Surveyed netizens were also generally hopeful about impact of artificial intelligence on judicial decision-making. 87.7% of respondents thought that the introduction of big data and machine learning would enhance the determinacy of legal outcomes. 9.0% disagreed while 3.3% were unsure.



Litigation Experience of Respondents from the Internet Sample

### *B. Legal Aid Seekers*

Between end 2019 and early 2020, we also conducted in-

person interviews of 114 legal aid seekers. Interviewees were randomly selected from among the clients of a legal aid clinic operating in Shanghai. Not everyone had a live dispute that could potentially escalate to legal action. Some visited the legal aid center to educate themselves about the law. But the fact that they did so indicates a greater level of engagement with the legal system than the average citizen. To protect safeguard privacy and encourage candor, interviewees were not asked for potentially identifying information, including their date of birth or household registration. We observed, however, that a substantial number of legal aid seekers were from the older generation.

Although the same questionnaire was read to all interviewees, interactions ranged from ten-minute transactions to hour-long discussions. Legal aid seekers differed in the amount of time and the enthusiasm they had for the study. Some were eager to the point of garrulity; others were quietly reticent or visibly harried. Although we tried as far as possible to standardize the formulation and delivery of questions, interviewees occasionally strayed off-topic and some were more anxious to tell their own stories rather than respond to specific queries. The quality and number of germane answers thus varied between interviewees and across questions. A few general themes, however, emerged from our conversations.

First, as compared to netizens, a smaller proportion of legal aid seekers were aware of court documents, including judgments, being made available online; 46 had heard of this development whereas 68 had not. But legal aid seekers on the whole reacted positively to the availability of such resources. Of 110 responsive interviewees, 83 agreed that the online disclosure and accessibility of judicial product on the internet has enhanced public confidence in the administration of justice. In discussion, 47 of them spontaneously raised issues of access and accountability. The fact that judicial opinions were available on the internet for all to study, they felt, made resort to law more convenient and less imposing. “Chinese people have the impression that litigation is very complex. Transparency can reduce the number of visits to the courthouse and can also let ordinary citizens believe more in the justice system,” commented Zhang, a young woman caught in a family dispute.<sup>235</sup> Two other women expressed similar opinions.<sup>236</sup> The

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<sup>235</sup> Interview No. 29.

<sup>236</sup> Interview No. 14; Interview No. 69.

move towards online disclosure also “prevents corruption”<sup>237</sup> and guards against “black box operations.”<sup>238</sup> “In the past,” said Li, an elderly man facing a contractual dispute, “the government had a spear in their left hand and a shield in their right hand. No matter how, the government is always in the right. But now, with openness, ordinary citizens knowing the situation can monitor [the courts] and judges can also ensure they improve their efficiency and quality.”<sup>239</sup> Wang, who was dismissed by her company on a pretext after falling pregnant, also had positive reactions. “When ordinary citizens like me run into these kinds of legal problems, people in the work unit will frighten me by telling me they have social *guanxi*, they have *guanxi* in the courts, they have *guanxi* in the arbitral tribunals, they have a legal team. But if there is openness, then it’s very good because next time they cannot use this to fool with me.”<sup>240</sup> The preceding ideas are, perhaps, best summarized by Zhou:

*This [development] is very good. The first point is that it increases public confidence. Courts serve ordinary citizens and, being open, can be inspected by them. The second aspect is that everyone must learn. Openness is a very good mode of passing down knowledge. We must know the law, obey the law, and learn the law. Only then can the law protect us.*

But some legal aid seekers entertained doubts about how things operate in practice. “This is a long process, basically impossible,” said Xia, a middle-aged man.<sup>241</sup> “For example there are some cases that cannot be disclosed, there are some [judgments] that will not be enforced. Disclosure is conditional,” he continued. “The slogan ‘rule the country through law’ has been hollered for twenty years but things are still like that, isn’t that so?” Tai too distrusted official narratives. “There has to be hearings and deliberations, there has to be collaborative discussion, mutual monitoring for there to be an impact,” said the litigant who has pursued his administrative suit for 8 years through petitions and appeals. “Courts are rigged from start to finish.”

Interviewees were fractured on the necessity of procuring

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<sup>237</sup> Interview No. 101.

<sup>238</sup> Interview No. 101; Interview No. 83; Interview No. 90.

<sup>239</sup> Interview No. 4.

<sup>240</sup> Interview No. 73.

<sup>241</sup> Interview No. 44.

legal services once a complaint has been automatically drafted by a computer. Out of the 111 legal aid seekers who responded to this question, 43 would still hire a lawyer, 28 would not,<sup>242</sup> and 40 said that it depended on the circumstances. Among respondents who would not retain a lawyer, 10 expressed confidence in handling their own cases and 12 raised financial considerations. These reasons are, of course, not mutually exclusive. “Hiring a lawyer requires money. I don’t think I will hire a lawyer—I will go to court myself,” stated Chen, an elderly man looking for assistance on an inheritance issue. “It not only trains my abilities—it is also a learning opportunity. Originally, I was ignorant but over the last few years I have acquired some legal knowledge.”<sup>243</sup> “If the software is useful,” said Tao, “I won’t look for a lawyer.” “Once they open their mouths, they will be asking for 5000 yuan.”<sup>244</sup> A few also articulated an equivalency between humans and machines. According to Luo, a 74-year-old woman mulling a charge of filial neglect, “software more or less counts as a lawyer.” “They are actually the same, only that [software] is free and serves us.”<sup>245</sup>

Legal aid seekers who would nonetheless hire a lawyer believed attorneys to be more holistic and adaptable in their thinking than computers and more technically competent than themselves. These interviewees expressed reservations about the limits of technology, on the one hand, and their own ability to prosecute arguments on the other. “I would guess that the software is still not comprehensive,” pondered Yuan. “[T]he software’s knowledge is rigid. [Whereas] I believe that the legal determination should be based on the actual situation. [The eventual disposition] must accord with sentiment, reason, and law. So, I will still hire a lawyer.”<sup>246</sup> Close to a dozen interviewees also emphasized the importance of personal interactions. Exclaimed Wang, a 40-year-old woman pursuing a labor claim: “I will [hire a lawyer], of course! One helps you to write things up without meeting you, one is face-to-face. Of course, I will believe the face-to-face, the lawyer I find myself, face-to-face.”<sup>247</sup>

Among many interviewees who gave qualified answers, the ultimate decision whether to retain a legal professional in any

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<sup>242</sup> This count includes two interviewees who stated that they would neither use a computer nor consult a lawyer.

<sup>243</sup> Interview No. 67.

<sup>244</sup> Interview No. 97.

<sup>245</sup> Interview No. 63.

<sup>246</sup> Interview No. 78.

<sup>247</sup> Interview No. 56.

given case turned on the complexity of the matter and the amount at stake. The following responses are illustrative. “If I am unable to get the case accepted,” said a university student researching on behalf of a relative, “I will hire a lawyer for guidance. But if I am able to get the case accepted, then I won’t. Moreover, it depends on the case. There is no need for a lawyer in an obvious case, only in an unclear one.”<sup>248</sup> For Ding, a middle-aged man caught up in a contractual disagreement, any decision “will have to depend on the dispute.” “Take my case. It’s worth at most 6000 yuan. If I hire a lawyer, the amount I recover from the lawsuit won’t even be enough to buy the water purifier [in this legal aid clinic].”<sup>249</sup> To Yang, a middle-aged woman embroiled in a domestic dispute, case type also matters. “In the case of a family matter, the parties are better acquainted with the underlying facts and circumstances than the lawyer. But if the dispute is more technical in nature, implicating for example intellectual property, then I will engage a lawyer.”<sup>250</sup>

Unsurprisingly, interviewees were also divided on the reliability of artificial as opposed to human predictions. In the event of conflicting advice regarding case outcomes, 20 interviewees would trust the algorithm and 49 the attorney. 34 indicated were uncertain. 10 of those favoring human judgment cited the lawyer’s ability to think integrally. For example, Wang, a 40-year-old woman engaged in a labor grievance, declared unequivocally for the lawyer. “Software is only just software. A lawyer will consider things for me more comprehensively.”<sup>251</sup> He, a man in his mid-40s, “will believe the lawyer because the lawyer will point out issues forthrightly. Moreover, what the software says is not all that accurate. It will let you choose A [or] B, then provide you a reference. I feel the lawyer is more convincing and a little safer.”<sup>252</sup> Presence and interactivity also matter. Xu, a young woman, finds professional legal advice to be more credible because “the lawyer is two-way and communicates.” “Software is, after all, one-way.” Sharing this intuition, Cai, a labor disputant, said he was “more willing to believe the lawyer.” “Software cannot be seen and cannot be touched. A lawyer is a real person sitting here. This is my personal feeling.”

A substantial minority, however, preferred artificial judgment. Underlying this sentiment, for some interviewees, is

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<sup>248</sup> Interview No. 90.

<sup>249</sup> Interview No. 7.

<sup>250</sup> Interview No. 1.

<sup>251</sup> Interview No. 56.

<sup>252</sup> Interview No. 47.

a general suspicion of the legal profession. “A lawyer is not necessarily an expert in the field of my case and may not be professional enough. I feel that software is a little more dependable,” Meng, a middle-aged woman.<sup>253</sup> “Software removes many human factors,” asserted Zhang, who shares Meng’s demographics. Chen, a young woman, also perceived machines as “being more objective.” Attorneys “can be bought” and may play both sides, “devouring the plaintiff [before] devouring the defendant.”<sup>254</sup> Interestingly, one legal aid seeker juxtaposed the public nature of software and the private incentives of lawyers. “I believe the software! It is definitely reliable,” affirmed Zhu, a middle-aged man involved in a traffic accident. “This software is released for everyone to use. Everyone can observe this matter, discuss this question. The eyes of the masses are bright as snow. Although a lawyer burns [the client’s] money, he thinks more for himself.”<sup>255</sup> Another legal aid seeker emphasized the provenance of the algorithm. “I believe the software,” said Qiang, an elderly woman navigating a family dispute, “because the software is developed by the state whereas the lawyer[’s opinion] is personal.” “Because the software must have been approved by the state, I feel it will be a little fairer. In fact, I need this [software] now because I have no money. If it’s free, I will be willing to use it now.”<sup>256</sup>

### C. Normative Implications

These empirical findings hint at the possibilities—and limits—of technology in relieving some of the central tensions in Chinese justice. Although the contribution of automated transcribers and robot clerks to judicial efficiency remains to be seen, mass digitization and disclosure has the potential to enhance the public image of the courts. Among both internet users and legal aid seekers, the availability of court documents online is widely known and broadly welcomed. While some remain unpersuaded that things on the ground will truly change, a good number praised transparency as an antidote to judicial corruption and ineptitude. The exposure of judicial procedures and outcomes to public scrutiny may thus convince disputants to resolve matters in court even when they have nagging doubts about the quality of the bench. It thereby encourages resort to law while tempering demands for ever greater stringency in the

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<sup>253</sup> Interview No. 6.

<sup>254</sup> Interview No. 90.

<sup>255</sup> Interview No. 8.

<sup>256</sup> Interview No. 40.



selection and training of judges.

But the mass publication of judicial decisions does not only discipline judicial behavior. It also teaches the public how the law operates in real-life situations and numerous legal aid seekers have either consulted or intend to search for judgments on the internet. Besides databases and repositories, a multitude of online applications, private and official, seek to educate disputants about their rights and how to assert them. Approximately half of all netizens surveyed had availed themselves of these litigation services. And Chinese courts today help initiate cases in addition to deciding them. While artificial intelligence will not produce law without lawyers—many legal aid seekers interviewed would engage an attorney even if a complaint has been generated for them—empowering litigants to press their own suits reduces their dependence on others. In particular, the fact that some legal aid seekers would forgo professional advice in favor of self-help suggests that technology, while promoting access to justice, simultaneously diminishes the role of lawyers as community organizers and changemakers.

Finally, predictive software furnished by the judiciary could very well sway disputants away from combative justice towards mediated peace. Here again, our investigations show human counsel is frequently preferred to algorithmic advice. But about one quarter of netizens and a fifth of legal aid seekers who contemplated our hypothetical would unqualifiedly believe the computer over a lawyer. The former is perceived as more dispassionate than the latter and less susceptible to the kind of self-motivated biases that taint human judgment. By citing relevant authorities and giving a forecast of the merits, litigation guidance machines installed across the nation's courthouses might persuade some litigants to settle ostensibly unsound claims rather than doggedly pursue their grievances to the bitter end. Crucially, they do so not by browbeating the parties into acquiescence but by dousing their expectations of legal success. Conveying at least the impression of scientific objectivity, artificial intelligence promotes social harmony without offending the rule of law.

#### CONCLUSION

China has made no secret of its ambition is to transform its society and economy through technology. In 2017, the State Council articulated a national strategy for making China a global

leader in artificial intelligence.<sup>257</sup> By 2030, the “New Generation Artificial Intelligence Development Plan” announces, China will emerge as a global innovation center for artificial intelligence, boasting a trillion-yuan industry. The culmination of a sustained interest in exploiting artificial intelligence to further the central state’s policy goals, the Plan declares investment in the technology to be “a major strategy to enhance national competitiveness and protect national security.” Through the development of artificial intelligence, China hopes to sharpen its military capabilities, galvanize its economy, and improve the provision and delivery of public services. From this perspective, the changes overtaking the juridical sphere are one part of a larger strategy for propelling the nation into the digital age and onto the world stage.<sup>258</sup> But the technologization of the legal system also responds to oppositions in Chinese justice. Some tensions are the product of China’s historical contingencies. Others might be thought to be more fundamental in nature given China’s brand of socialist law. While encouraging citizens to vindicate their legitimate rights, the Party-State is wary of legal mobilization that subverts its hegemony. Whether deliberate or organic, Chinese legal technology—we venture—has evolved to answer these dilemmas.

To conclude, there is an insight here that transcends jurisdictional boundaries and legal cultures. According to Cui Yadong, President and Chief Justice of the Shanghai High People’s Court, “artificial intelligence makes the court system more just, efficient and authoritative.”<sup>259</sup> This narrative portrays the technologization of the justice as its perfection.<sup>260</sup> Technical

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<sup>257</sup> Guowuyuan Guanyu Yinfu Xinyidai Rengong Zhineng Fazhan Guihua de Tongzhi (国务院关于印发新一代人工智能发展规划的通知) [The Notice of the State Council regarding Distributing the New Generation of Artificial Intelligence Development Plans] (promulgated by the State Council, July 8, 2017, effective July 20, 2017), [http://www.gov.cn/zhengce/content/2017-07/20/content\\_5211996.htm](http://www.gov.cn/zhengce/content/2017-07/20/content_5211996.htm).

<sup>258</sup> See Björn Ahl, Lidong Cai, & Chao Xi, *Data-Driven Approaches to Studying Chinese Judicial Practice: Opportunities, Challenges and Issues*, 19 CHINA L. REV. 1, 5 (2019).

<sup>259</sup> Cui Yadong, *Rengong Zhineng Rang Sifa Gengjia Gongzheng Gaoxiao* (人工智能让司法更加公正高效) [“Artificial Intelligence” Makes Judicature More Just, Efficient and Authoritative], CHINA LAW AND POLICY ASSOCIATION, Oct. 2017, <https://law.stanford.edu/china-law-and-policy-association-clpa/articles/>; see also Ning Jie, *Zhou Qiang: Jiakuai Zuihui Fayuan Jianshe Cujin Sifa Weimin Gongzheng Sifa* (周强: 加快智慧法院建设促进司法为民公正司法) [Zhou Qiang: Speed Up the Creation of “Smart Courts” to Promote Justice and Fairness], SUPREME PEOPLE’S COURT, Nov. 18, 2016, [http://www.cac.gov.cn/2016-11/18/c\\_1119937773.htm](http://www.cac.gov.cn/2016-11/18/c_1119937773.htm).

<sup>260</sup> See, e.g., Deng, *supra* note 12, at 280 (contending that “[a]rtificial

capabilities advance but the aspirations of the law are universal and enduring. From this perspective, artificial intelligence promises broad access to justice, speedy adjudication, consistency in legal outcomes, and judicial accountability. Smart courts are like their predecessors—only better. Certainly, it is desirable for the rule of law that judicial decisions be made freely available to the public and for citizens to know and vindicate their legal rights. The obverse of the democratization of law, however, is the marginalization of the legal profession. The more people can navigate the legal process, the less they need lawyers to mediate between them and the justice system. The advent of technology thus surfaces a tension between two dimensions of legality.<sup>261</sup> The first dimension sees law as the abiding “enterprise of subjecting human conduct to the governance of rules.”<sup>262</sup> To engender and re-produce social order, a legal system must satisfy a list of conditions. Among other things, rules must be public and remedies available to all. The second dimension, on the other hand, conceives of law as a dynamic force that, by responding to reason,<sup>263</sup> has the potential to reshape the normative status quo.<sup>264</sup> There is no deep theoretical contradiction between these visions of law. But to the extent that lawyers are integral to the vitality of the legal order, innovations that displace them may also undermine one conception of the rule of law.

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intelligence] will not fundamentally change the intrinsic character of the common law system and that [artificial intelligence’s] application in the judiciary should be encouraged”).

<sup>261</sup> See Jeremy Waldron, *The Concept and the Rule of Law*, 43 GA. L. REV. 1, 58 (2008) (distinguishing between two ideals of the rule of law, one “that concentrates on . . . generality, determinacy, etc.” and one “that is less fixated on predictability and more insistent on the opportunities for argumentation and responsiveness to argument that legal institutions provide”).

<sup>262</sup> Lon L. Fuller, *THE MORALITY OF LAW* 106 (1964).

<sup>263</sup> Lon L. Fuller & Kenneth I. Winston, *The Forms and Limits of Adjudication*, 92 HARV. L. REV. 353, 353–409 (1978).

<sup>264</sup> See JULIUS STONE, *SOCIAL DIMENSIONS OF LAW AND JUSTICE* 620 (1966) (arguing that the substantive import of the rule of law includes “a minimal justness of rules and a dynamic responsiveness of substantive law to the needs of social and economic development”).